

ATTACHMENT 20

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 IN RE: PROCESSED EGG PRODUCTS :
4 ANTITRUST LITIGATION :
5 -----: MDL No. 2002
6 THIS DOCUMENT APPLIES TO: : 08-MD-02002
7 ALL ACTIONS :

8 -- HIGHLY CONFIDENTIAL --

9 Thursday, June 27, 2013

10
11 Continued videotaped deposition of
12 GENE W. GREGORY, taken at the offices of
13 Pepper Hamilton LLP, 3000 Two Logan Square,
14 18th & Arch Street, Philadelphia,
15 Pennsylvania 19103, beginning at 8:08 a.m.,
16 before LINDA ROSSI RIOS, RPR, CCR and Notary
17 Public.

<p style="text-align: right;">646</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 QUINN EMANUEL URQUHART & SULLIVAN</p> <p>4 BY: STEIG D. OLSON, ESQUIRE</p> <p>5 and</p> <p>6 LEE TURNER-DODGE, ESQUIRE</p> <p>7 51 Madison Avenue, 22nd Floor</p> <p>8 New York, New York 10010</p> <p>9 212-849-7152</p> <p>10 212-849-7000</p> <p>11 steigolson@quinnemanuel.com</p> <p>12 leeturnerdodge@quinnemanuel.com</p> <p>13 On behalf of the Direct Purchaser</p> <p>14 Plaintiffs</p> <p>15</p> <p>16 MILBERG LLP</p> <p>17 BY: CHARLES SLIDERS, ESQUIRE</p> <p>18 One Pennsylvania Plaza</p> <p>19 New York, New York 10119</p> <p>20 646-733-5727</p> <p>21 cslidders@milberg.com</p> <p>22 On behalf of the Indirect Purchaser</p> <p>23 Plaintiffs</p> <p>24</p> <p>25 HAUSFELD, LLP</p> <p>BY: JEANNINE M. KENNEY, ESQUIRE</p> <p>1604 Locust Street</p> <p>2nd Floor</p> <p>Philadelphia, Pennsylvania 19103</p> <p>215-985-3270</p> <p>jkenney@hausfeldllp.com</p> <p>On behalf of Direct Purchaser Plaintiffs</p> <p>JENNER & BLOCK, LLP</p> <p>BY: RICHARD P. CAMPBELL, ESQUIRE</p> <p>353 North Clark Street</p> <p>Chicago, Illinois 60654</p> <p>312-923-2818</p> <p>rcampbell@jenner.com</p> <p>On behalf of Kraft Foods Global, Inc.</p>	<p style="text-align: right;">648</p> <p>1 GIBSON, DUNN & CRUTCHER LLP</p> <p>2 BY: JASON C. MCKENNEY, ESQUIRE</p> <p>3 2100 McKinney Avenue</p> <p>4 Dallas, Texas 75201-6912</p> <p>5 214-698-3279</p> <p>6 jmckenney@gibsondunn.com</p> <p>7 On behalf of Defendant,</p> <p>8 Cal-Maine Foods, Inc.</p> <p>9</p> <p>10 PORTER, WRIGHT, MORRIS & ARTHUR</p> <p>11 BY: DONALD M. BARNES, ESQUIRE</p> <p>12 1919 Pennsylvania Avenue, NW</p> <p>13 Suite 500</p> <p>14 Washington, D.C. 20006</p> <p>15 202-778-3056</p> <p>16 dbarnes@porterwright.com</p> <p>17 On behalf of Rose Acre Farms</p> <p>18</p> <p>19 KASOWITZ BENSON TORRES & FRIEDMAN, LLP</p> <p>20 BY: MARGARET ZIEMIANEK, ESQUIRE</p> <p>21 101 California Street</p> <p>22 San Francisco, California 94111</p> <p>23 415-655-4335</p> <p>24 mziemianek@kasowitz.com</p> <p>25 On behalf of Nu-Cal Foods, Inc.</p> <p>BUCHANAN, INGERSOLL & ROONEY</p> <p>BY: SAMANTHA L. SOUTHAL, ESQUIRE</p> <p>Two Liberty Place</p> <p>50 S. 16th Street</p> <p>Suite 3200</p> <p>Philadelphia, Pennsylvania 19102</p> <p>215-665-3884</p> <p>samatha.southall@bipc.com</p> <p>On behalf of Hillandale Farms, Inc.,</p> <p>Hillandale Farms East, Inc., Hillandale</p> <p>Gettysburg LP and Hillandale Farms of Pa.,</p> <p>Inc.</p>
<p style="text-align: right;">647</p> <p>1 FAEGRE BAKER DANIELS</p> <p>2 BY: RYAN M. HURLEY, ESQUIRE</p> <p>3 300 North Meridian Street</p> <p>4 Suite 2700</p> <p>5 Indianapolis, Indiana 46204-1750</p> <p>6 317-237-1144</p> <p>7 ryan.hurley@faegrebd.com</p> <p>8 On behalf of Midwest Poultry Services</p> <p>9</p> <p>10 DECHERT LLP</p> <p>11 BY: CHRISTINE C. LEVIN, ESQUIRE</p> <p>12 Cira Center</p> <p>13 2929 Arch Street</p> <p>14 Philadelphia, Pennsylvania 19104</p> <p>15 215-994-2421</p> <p>16 christine.levin@dechert.com</p> <p>17 On behalf of RW Sauder, Inc.</p> <p>18</p> <p>19 PEPPER HAMILTON, LLP</p> <p>20 BY: JAN P. LEVINE, ESQUIRE</p> <p>21 and</p> <p>22 WHITNEY REDDING, ESQUIRE</p> <p>23 and</p> <p>24 ROBIN SUMNER, ESQUIRE</p> <p>25 3000 Two Logan Square</p> <p>18th & Arch Street</p> <p>Philadelphia, Pennsylvania 19103</p> <p>215-981-4714</p> <p>215-981-4121</p> <p>215-981-4652</p> <p>levinej@pepperlaw.com</p> <p>reddingw@pepperlaw.com</p> <p>sumnerr@pepperlaw.com</p> <p>On behalf of United Egg Producers and the</p> <p>United States Egg Marketers</p> <p>MARCUS & SHAPIRA LLP</p> <p>BY: MOIRA E. CAIN-MANNIX, ESQUIRE</p> <p>One Oxford Center</p> <p>35th Floor</p> <p>Pittsburgh, Pennsylvania 15219</p> <p>412-338-3344</p> <p>cain-mannix@macus-shapira.com</p> <p>On behalf of Giant Eagle, Inc.</p>	<p style="text-align: right;">649</p> <p>1 BRIGGS and MORGAN</p> <p>2 BY: TROY HUTCHINSON, ESQUIRE</p> <p>3 2200 IDS Center</p> <p>4 80 South 8th Street</p> <p>5 Minneapolis, Minnesota 55402</p> <p>6 612-977-8415</p> <p>7 thutchinson@briggs.com</p> <p>8 On behalf of Sparboe Farms, Inc.</p> <p>9</p> <p>10 WEIL, GOTSHAL & MANGES LLP</p> <p>11 BY: CARRIE M. ANDERSON, ESQUIRE</p> <p>12 1300 Eye Street, N.W.</p> <p>13 Suite 900</p> <p>14 Washington, D.C. 20005</p> <p>15 202-682-7231</p> <p>16 carrie.anderson@weil.com</p> <p>17 On behalf of Defendant, Michael Foods</p> <p>18</p> <p>19 TELEPHONIC APPEARANCES:</p> <p>20</p> <p>21 DINSMORE & SHOHL LLP</p> <p>22 BY: THOMAS L. CZECHOWSKI, ESQUIRE</p> <p>23 1100 Courthouse Plaza, SW</p> <p>24 10 N. Ludlow Street</p> <p>25 Dayton, Ohio 45402</p> <p>937-463-4928</p> <p>thomas.czechowski@dinsmore.com</p> <p>On behalf of Weaver Brothers</p> <p>EIMER STAHL, LLP</p> <p>BY: VANESSA G. JACOBSEN, ESQUIRE</p> <p>224 South Michigan Avenue, Suite 1300</p> <p>Chicago, Illinois 60604</p> <p>312-660-7604</p> <p>vjacobsen@eimerstahl.com</p> <p>On behalf of Moark LLC, and Norco Ranch,</p> <p>Inc.</p>

2 (Pages 646 to 649)

<p style="text-align: right;">650</p> <p>1 LOVELL STEWART HALEBIAN & JACOBSON LLP BY: MERRICK SCOTT RAYLE, ESQUIRE 2 61 Broadway, Suite 501 New York, New York 10006 3 212-608-1900 msrayle@sbcglobal.net 4 On behalf the Indirect Purchaser Plaintiffs 5 6 VERITEXT VIRTUAL APPEARANCES: 7 8 BAKER & MCKENZIE LLP BY: PATRICK J. AHERN, ESQUIRE 9 300 East Randolph Street Chicago, Illinois 60601 10 312-861-3735 patrick.ahern@bakermckenzie.com 11 On behalf of Winn-Dixie, Inc., Roundy's Supermarkets, Inc., 12 C&S Wholesaler Grocers, Inc., and H.J. Heinz Company, L.P. 13 14 15 16 ALSO PRESENT: 17 ROBERT MIRABELLA, Videographer 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">652</p> <p>1 E X H I B I T S (cont'd.) 2 3 EXHIBIT NUMBER DESCRIPTION PAGE MARKED 4 5 Gregory-86 12/30/03 United Voices, MOARK0006744 - 0006756 737 6 Gregory-87 4/15/04 Letter, NUCAL-08md2002-0001653 739 7 8 Gregory-88 6/1/04 Letter, NUCAL-08md2002-0001440 741 9 Gregory-89 Packet of documents, MOARK0020062 - 0020096 746 10 11 Gregory-90 Animal Welfare Committee October 10, 2006 San Antonio, TX, MOARK0027352 - 0027389 771 12 Gregory-91 1/20/09 United Voices, RWS 000000775 - 781 780 13 14 Gregory-92 E-mail chain, CF0008607 787 15 Gregory-93 Impacts of Banning Modern Cage Egg Production in the United States press release, CM00187932 - CM00187935 788 16 Gregory-94 Impacts of Banning Cage Egg Production in the United States report, CPCEGED00132106 - CPCEGED00132145 789 17 Gregory-95 UEP Board of Directors' Meeting, UB00007529 - UB00007534 791 18 Gregory-96 E-mail chain, CF0005677 805 19 20 21 22 23 24 25</p>
<p style="text-align: right;">651</p> <p>1 I N D E X 2 3 Testimony of: GENE W. GREGORY 4 By Mr. Olson 661, 958 5 By Ms. Cain-Mannix 736 6 By Mr. Slidders 783 7 By Ms. Levine 820 8 By Mr. Barnes 940 9 10 E X H I B I T S 11 12 EXHIBIT NUMBER DESCRIPTION PAGE MARKED 13 14 Gregory-79 7/2/99 Letter, BELL007698 - BELL007709 661 15 Gregory-80 11/22/06 Letter, UE0302008 & UE0302009 675 16 17 Gregory-81 4/17/07 Letter, NUCAL-08md20002-0000456 & 08md20002-0000457 684 18 19 Gregory-82 1/3/08 United Voices, UE0619780 - UE0619789 687 20 Gregory-83 PowerPoint presentation, UE0533500 - UE0533514 692 21 22 Gregory-84 7/21/08 E-mail with attachment, UE0354878 - UE0354882 710 23 24 Gregory-85 9/24/08 E-mail, NUCAL-08md2002-0056239 & NUCAL-08md2002-0056240 733 25</p>	<p style="text-align: right;">653</p> <p>1 E X H I B I T S (cont'd.) 2 3 EXHIBIT NUMBER DESCRIPTION PAGE MARKED 4 5 Gregory-97 Economic Impacts of Converting US Production to Enrich Cage Systems, CF0005678 - CF0005704 805 6 7 Gregory-98 Shell Egg Marketing Committee October 11, 2006 San Antonio, TX marketing material, UE0210026 - UE0210047 808 8 9 Gregory-99 9/26/05 Letter, UE0212411 - UE0212413 812 10 Gregory-100 3/19/08 Letter, NL003516 & NL003517 813 11 12 Gregory-101 2/6/07 E-mail, MF10004431 - MF10004433 814 13 Gregory-102 E-mail chain, RWS 000011241 & 11242 815 14 15 Gregory-103 Animal Welfare Report for 2003 Area Meetings, MF10024405 - MF10024422 817 16 17 Gregory-104 E-mail chain, NL00327492 & NL00327493 818 18 Gregory-105 2/1/05 Letter, UE0145966 - UE0145969 830 19 20 Gregory-106 United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks, UE0225056 - UE0225085 848 21 22 23 24 25</p>

3 (Pages 650 to 653)

<p style="text-align: right;">654</p> <p>1 EXHIBITS (cont'd.)</p> <p>2 - - -</p> <p>3 EXHIBIT NUMBER DESCRIPTION PAGE MARKED</p> <p>4</p> <p>5 Gregory-107 United Egg Producers</p> <p>6 Animal Husbandry</p> <p>7 Guidelines for U.S.</p> <p>8 Egg Laying Flocks,</p> <p>9 UE0295925 - UE0295940 881</p> <p>10</p> <p>11 Gregory-108 10/4/04 Letter,</p> <p>12 UE0176451 906</p> <p>13 Gregory-109 UEP-Producer Committee</p> <p>14 For Animal Welfare</p> <p>15 January 24, 2005</p> <p>16 Atlanta, GA Minutes,</p> <p>17 UE0210295 - UE0210298 921</p> <p>18 Gregory-110 Letter,</p> <p>19 UE0176108 938</p> <p>20</p> <p>21 Gregory-111 11/17/04 E-mail,</p> <p>22 NL 000482 944</p> <p>23 Gregory-112 A Membership Opportunity</p> <p>24 Presented By UEP and</p> <p>25 Midwest UEP To ROSE ACRE</p> <p>FARMS® THE GOOD EGG</p> <p>PEOPLE®,</p> <p>UE0186974 & UE0186975 946</p> <p>Gregory-113 UEP Membership agreement,</p> <p>UE0148105 949</p> <p>Gregory-114 Major Prospects for UEP,</p> <p>UE0198410 951</p> <p>Gregory-115 12/22/06 USEM Membership</p> <p>Agreement and Export</p> <p>Commitment 953</p> <p>Gregory-116 E-mail chain,</p> <p>MF10247110 956</p> <p>- - -</p>	<p style="text-align: right;">656</p> <p>1</p> <p>2 - - -</p> <p>3 (It is hereby stipulated and</p> <p>4 agreed by and among counsel that</p> <p>5 sealing, filing and certification are</p> <p>6 waived; and that all objections,</p> <p>7 except as to the form of the question,</p> <p>8 will be reserved until the time of</p> <p>9 trial.)</p> <p>10 - - -</p> <p>11 VIDEOGRAPHER: We are now on the</p> <p>12 record. Please note that the</p> <p>13 microphones are sensitive and will</p> <p>14 pick up whispering and private</p> <p>15 conversations. Please turn off all</p> <p>16 cell phones or place them away from</p> <p>17 the microphones as they can interfere</p> <p>18 with the deposition audio. Recording</p> <p>19 will continue until all parties agree</p> <p>20 to go off the record.</p> <p>21 My name is Robert Mirabella</p> <p>22 representing Veritext New York.</p> <p>23 The date today is June 27, 2013,</p> <p>24 and the time is approximately</p> <p>25 8:08 a.m.</p>
<p style="text-align: right;">655</p> <p>1 DEPOSITION SUPPORT INDEX</p> <p>2</p> <p>3 DIRECTION TO WITNESS NOT TO ANSWER</p> <p>4 Page Line Page Line</p> <p>5 (None)</p> <p>6</p> <p>7</p> <p>8</p> <p>9 REQUEST FOR PRODUCTION OF DOCUMENTS</p> <p>10 Page Line Description</p> <p>11 (None)</p> <p>12</p> <p>13</p> <p>14 STIPULATIONS</p> <p>15 Page Line</p> <p>16 656 3-9</p> <p>17</p> <p>18</p> <p>19 QUESTIONS MARKED</p> <p>20 Page Line</p> <p>21 (None)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">657</p> <p>1</p> <p>2 This deposition is being held at</p> <p>3 Pepper Hamilton, located at Two Logan</p> <p>4 Square, Philadelphia, Pennsylvania.</p> <p>5 The caption of this case is In Re:</p> <p>6 Processed Egg Products Antitrust</p> <p>7 Litigation. This case is filed in the</p> <p>8 United States District Court, Eastern</p> <p>9 District of Pennsylvania. The case</p> <p>10 number is 08-MD-02002, MDL number</p> <p>11 2002. This is the continuing</p> <p>12 videotape deposition of Gene Gregory.</p> <p>13 At this time the attorneys</p> <p>14 present and attending remotely will</p> <p>15 please identify themselves and the</p> <p>16 parties they represent.</p> <p>17 MR. OLSON: Steig Olson for</p> <p>18 Quinn Emanuel Urquhart & Sullivan for</p> <p>19 the Direct Purchaser Class Plaintiffs.</p> <p>20 MS. DODGE: Lee Turner-Dodge</p> <p>21 also from Quinn Emanuel also for the</p> <p>22 Direct Purchaser Class Plaintiffs.</p> <p>23 MR. CAMPBELL: Richard Campbell,</p> <p>24 Jenner & Block for the Kraft</p> <p>25 plaintiffs.</p>

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<p style="text-align: right;">658</p> <p>1</p> <p>2 MS. CAIN-MANNIX: Moria</p> <p>3 Cain-Mannix, Marcus & Shapira for</p> <p>4 Giant Eagle.</p> <p>5 MR. SLIDDERS: Charles Slidders</p> <p>6 from Milberg LLP for the Indirect</p> <p>7 Purchaser Plaintiffs.</p> <p>8 MS. KENNEY: Jeannine Kenney</p> <p>9 with Hausfeld, LLP for the Direct</p> <p>10 Purchaser Plaintiffs.</p> <p>11 MR. HUTCHINSON: Troy Hutchinson</p> <p>12 on behalf of defendants Sparboe Farms</p> <p>13 Inc.</p> <p>14 MS. LEVIN: Christine Levin of</p> <p>15 Dechert on behalf of RW Sauder.</p> <p>16 MS. ZIEMIANEK: Margaret</p> <p>17 Ziemianek, Kasowitz Benson Torres &</p> <p>18 Friedman on behalf of defendant Nu-Cal</p> <p>19 Foods.</p> <p>20 MR. HURLEY: Ryan Hurley, Faegre</p> <p>21 Baker Daniels for Midwest Poultry</p> <p>22 Services.</p> <p>23 MR. McKENNEY: Jason McKenney,</p> <p>24 Gibson, Dunn & Crutcher on behalf of</p> <p>25 Cal-Maine Foods.</p>	<p style="text-align: right;">660</p> <p>1</p> <p>2 - - -</p> <p>3 VIDEOGRAPHER: The time is</p> <p>4 8:12 a.m. We are back on the record.</p> <p>5 MS. LEVINE: We're back on the</p> <p>6 record.</p> <p>7 MR. OLSON: We made appearances</p> <p>8 here in person and now could we have</p> <p>9 appearances on the phone, please?</p> <p>10 MR. CZECHOWSKI: This is Tom</p> <p>11 Czechowski for Weaver Brothers.</p> <p>12 MS. JACOBSEN: Vanessa Jacobsen</p> <p>13 from Eimer Stahl for Moark LLC and</p> <p>14 Norco Ranch, Inc.</p> <p>15 VIDEOGRAPHER: Thank you. Our</p> <p>16 court reporter, Linda Rossi</p> <p>17 representing Veritext will, please,</p> <p>18 swear in the witness and we can</p> <p>19 proceed.</p> <p>20 - - -</p> <p>21 GENE W. GREGORY, after having</p> <p>22 been duly sworn, was examined and</p> <p>23 testified as follows:</p> <p>24 - - -</p> <p>25 EXAMINATION</p>
<p style="text-align: right;">659</p> <p>1</p> <p>2 MS. SOUTHALL: Samantha Southall</p> <p>3 of Buchanan, Ingersoll & Rooney on</p> <p>4 behalf of defendants, Hillandale Farms</p> <p>5 of Pa., Inc., Hillandale Gettysburg</p> <p>6 LP, Hillandale Farms East, Inc., and</p> <p>7 Hillandale Farms, Inc.</p> <p>8 MR. BARNES: Don Barnes of</p> <p>9 Porter, Wright on behalf of Rose Acre</p> <p>10 Farms, Inc., and there's only one of</p> <p>11 them.</p> <p>12 MS. REDDING: Whitney Redding,</p> <p>13 Pepper Hamilton on behalf of UEP and</p> <p>14 USEM.</p> <p>15 MS. SUMNER: Robin Sumner,</p> <p>16 Pepper Hamilton on behalf of UEP and</p> <p>17 USEM.</p> <p>18 MS. LEVINE: Jan Levine, Pepper</p> <p>19 Hamilton on behalf of UEP and USEM.</p> <p>20 COURT REPORTER: We need to go</p> <p>21 off the record.</p> <p>22 VIDEOGRAPHER: The time is 8:10.</p> <p>23 Off the record.</p> <p>24 - - -</p> <p>25 (A recess was taken.)</p>	<p style="text-align: right;">661</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 BY MR. OLSON:</p> <p>4 Q. Good morning, Mr. Gregory.</p> <p>5 A. Good morning.</p> <p>6 Q. How are you doing physically</p> <p>7 today?</p> <p>8 A. I will make it through the day.</p> <p>9 Q. Okay. All right. Let me hand</p> <p>10 you what we'll mark as Gregory Exhibit 79.</p> <p>11 - - -</p> <p>12 (Exhibit Gregory-79, 7/2/99</p> <p>13 Letter, Bates BELL007698 - BELL007709,</p> <p>14 was marked for identification.)</p> <p>15 - - -</p> <p>16 BY MR. OLSON:</p> <p>17 Q. Please go ahead and review the</p> <p>18 document, or just the cover page and you can</p> <p>19 maybe flip through some of the attachments.</p> <p>20 For the record, this document</p> <p>21 is Bates stamped BELL007698 through 7709.</p> <p>22 Let us know when you've had a chance to</p> <p>23 briefly familiarize yourself with the</p> <p>24 document.</p> <p>25 A. There's an awful lot here, but</p>

5 (Pages 658 to 661)

<p style="text-align: right;">662</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 I think I recognize what this is and what</p> <p>3 it's about.</p> <p>4 Q. So can you identify this as a</p> <p>5 document that you received from John Bell in</p> <p>6 July of 1999?</p> <p>7 A. The name is Don. I thought you</p> <p>8 said John, I'm sorry.</p> <p>9 Q. I certainly meant to say Don.</p> <p>10 A. Okay. Yes, it is.</p> <p>11 Q. Mr. Bell refers to your egg</p> <p>12 industry statistics request?</p> <p>13 A. Yes.</p> <p>14 Q. What does that refer to?</p> <p>15 A. The question was, again, I'm</p> <p>16 sorry?</p> <p>17 Q. What does that refer to? What</p> <p>18 is an egg industry statistics request?</p> <p>19 A. These are statistics that he</p> <p>20 kept updated for I don't know, gosh, maybe</p> <p>21 back to 1983 or something like that. And</p> <p>22 distributed monthly. I think that's --</p> <p>23 Q. And he distributed it monthly</p> <p>24 to UEP?</p> <p>25 A. UEP was one of the people that</p>	<p style="text-align: right;">664</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 I don't know what further question might be.</p> <p>3 Maybe I --</p> <p>4 Q. Was he ever hired to do</p> <p>5 anything?</p> <p>6 A. Yeah, he had -- I don't know</p> <p>7 how many years he worked for the University</p> <p>8 of California as a poultry specialist or</p> <p>9 poultry extension worker. I'm not sure what</p> <p>10 the exact title was. And he had provided --</p> <p>11 he was the only source in the industry</p> <p>12 providing the -- this kind of statistical</p> <p>13 work. And upon his retirement at the</p> <p>14 university, they agreed to allow him to</p> <p>15 maintain an office, but he was not going to</p> <p>16 have any income source by which he could</p> <p>17 continue to gather this kind of information.</p> <p>18 There was no one else in the industry or any</p> <p>19 other economist or any other statistician</p> <p>20 that was keeping this kind of information.</p> <p>21 So it was critically important to the</p> <p>22 industry that this kind of information not be</p> <p>23 lost and that it be maintained. So we were</p> <p>24 trying to contract with him to bridge the gap</p> <p>25 until someone later could be found.</p>
<p style="text-align: right;">663</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 he shared the information with.</p> <p>3 Q. Now, is what's attached to this</p> <p>4 cover letter what Mr. Bell refers to by an</p> <p>5 egg industry statistics request or is that</p> <p>6 something different?</p> <p>7 A. No, this is the normal stuff</p> <p>8 that he does, he did every month. Just</p> <p>9 updating it from month to month.</p> <p>10 Q. But in the first line of his</p> <p>11 letter, he says, "Your egg industry</p> <p>12 statistics request was FAXED to you today and</p> <p>13 will be mailed in Priority mail to you on</p> <p>14 next Tuesday," which indicates to me that</p> <p>15 that's something different.</p> <p>16 A. I don't recall the reason why I</p> <p>17 was evidently interested in something before</p> <p>18 it came out, and I don't know what the need</p> <p>19 was.</p> <p>20 Q. Okay. Did UEP from time to</p> <p>21 time engage Mr. Bell in consulting projects?</p> <p>22 A. There were times when Don Bell</p> <p>23 was an invited like speaker at a meeting that</p> <p>24 we'd have to provide some statistical</p> <p>25 information. Beyond that, I don't recall and</p>	<p style="text-align: right;">665</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Eventually, I can't pronounce his name, but a</p> <p>3 gentleman named Maro at Iowa State University</p> <p>4 took over this work from Don Bell.</p> <p>5 Q. When you say this work and this</p> <p>6 type of information, generally how would you</p> <p>7 describe the type of information that Mr.</p> <p>8 Bell would provide?</p> <p>9 A. He was using USDA, he kept this</p> <p>10 for years of information that was published</p> <p>11 by USDA and Urner Barry and then he would</p> <p>12 take that information and try to make some</p> <p>13 projections with it or try to analyze what</p> <p>14 the conditions were and so forth. So he was</p> <p>15 tracking monthly hen inventories, monthly</p> <p>16 slaughter, chick hatch, a whole variety of</p> <p>17 information, most of which, in fact, I think</p> <p>18 was from USDA. However, he also tracked</p> <p>19 information as it related to like corn and</p> <p>20 soybean prices as reported, I think, by the</p> <p>21 Chicago Board of Trade. He also tracked eggs</p> <p>22 moving particularly from other states into</p> <p>23 California. He also tracked things like the</p> <p>24 USDA, I think this was USDA retail, the</p> <p>25 average retail prices and so forth. So the</p>

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<p style="text-align: right;">666</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 whole host of different things that he</p> <p>3 tracked. And the good thing about that was</p> <p>4 that with his work, you could compare today</p> <p>5 all the way back to, say, in the 1980s if you</p> <p>6 needed to and so forth, so...</p> <p>7 Q. And generally the information</p> <p>8 he tracked related to the supply of eggs?</p> <p>9 MS. LEVINE: Objection. Asked</p> <p>10 and answered.</p> <p>11 THE WITNESS: I don't think it</p> <p>12 was -- no, I don't think it was</p> <p>13 limited just to the supply of eggs.</p> <p>14 As I just said, it was what the layer</p> <p>15 inventory was, what the chick hatch</p> <p>16 was, what the slaughter was. It's a</p> <p>17 whole host of things.</p> <p>18 BY MR. OLSON:</p> <p>19 Q. Fair enough. Let's turn to the</p> <p>20 second to the last page in this document, it</p> <p>21 ends in the Bates stamp of 08. Why don't you</p> <p>22 go ahead and review that page and let me know</p> <p>23 when you're done.</p> <p>24 A. (Reviewing document.)</p> <p>25 So I've scanned it.</p>	<p style="text-align: right;">668</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't know. I can't recall</p> <p>3 what my discussions would have been.</p> <p>4 Q. You see the fourth idea that</p> <p>5 Mr. Bell is putting forward?</p> <p>6 A. Yes.</p> <p>7 Q. Or a way that the nation's</p> <p>8 layer flock could be corrected?</p> <p>9 A. Right.</p> <p>10 Q. It involves an industry-wide</p> <p>11 policy of a minimum floor space allowance.</p> <p>12 Right?</p> <p>13 A. Yes. Yes.</p> <p>14 Q. You see it says, "If 48 square</p> <p>15 inches were adopted as the minimum space</p> <p>16 allowance, millions of extra birds would be</p> <p>17 eliminated." Right?</p> <p>18 A. Yes.</p> <p>19 Q. So would it be fair to say that</p> <p>20 by July of 1999 you were aware of the idea</p> <p>21 that a minimum floor space allowance could be</p> <p>22 part of the supply adjustment program?</p> <p>23 MS. LEVINE: Object to the form</p> <p>24 of the question. Mischaracterization.</p> <p>25 THE WITNESS: One of the things</p>
<p style="text-align: right;">667</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you recall seeing the</p> <p>3 information on this page before?</p> <p>4 A. This, I believe, is 1999, and</p> <p>5 it would be hard for me to recall whether I</p> <p>6 had seen this previously or not.</p> <p>7 Q. So Mr. Bell discusses how</p> <p>8 correction in the size of the nation's layer</p> <p>9 flock could be attained. Do you see that?</p> <p>10 A. Yes, he does.</p> <p>11 Q. Is that the type of thing that</p> <p>12 Mr. Bell would discuss in his materials from</p> <p>13 time to time?</p> <p>14 A. Again, you're asking me for</p> <p>15 many years, but, yes, I think there were --</p> <p>16 periodically he did discuss them.</p> <p>17 Q. And did -- would you have</p> <p>18 one-on-one conversations with Mr. Bell by</p> <p>19 phone or in person ever?</p> <p>20 A. Oh, yes. There were times we</p> <p>21 had phone conversations, yes.</p> <p>22 Q. And is that a subject, this</p> <p>23 idea of corrections in the size of the</p> <p>24 nation's laying flock that you would discuss</p> <p>25 with Mr. Bell from time to time?</p>	<p style="text-align: right;">669</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 that is a problem here is that if</p> <p>3 you're truly, and I have been truly</p> <p>4 interested in animal welfare for many,</p> <p>5 many years, if what our industry had</p> <p>6 gotten themselves into is that they</p> <p>7 were cramming chickens into cages and</p> <p>8 into houses, into conditions that I</p> <p>9 personally thought was inhumane, but</p> <p>10 what they were trying to do is</p> <p>11 maximize the revenues from a house</p> <p>12 total rather than evaluating</p> <p>13 performance of the laying hen on an</p> <p>14 individual basis. So we were</p> <p>15 compromising their genetic potential</p> <p>16 by doing that. And we had people in</p> <p>17 the industry that were stocking birds</p> <p>18 in conditions as low as 43 square</p> <p>19 inches per bird which is just -- I</p> <p>20 just think it's embarrassing to say</p> <p>21 that, but we were. So what he is</p> <p>22 speaking about here, he's talking</p> <p>23 about just a minimum of 48 square</p> <p>24 inches which is still unacceptable.</p> <p>25 But he's saying if you did nothing</p>

7 (Pages 666 to 669)

<p style="text-align: right;">670</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 more than that, this is what could</p> <p>3 happen.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. The question is just, would it</p> <p>6 be fair to say that by July of 1999 you were</p> <p>7 aware of the idea that a minimum floor space</p> <p>8 allowance, whatever it was, could be part of</p> <p>9 the supply adjustment program?</p> <p>10 MS. LEVINE: Object to the form</p> <p>11 of the question. Asked and answered.</p> <p>12 THE WITNESS: I obviously would</p> <p>13 have been if I read this document in</p> <p>14 1999.</p> <p>15 BY MR. OLSON:</p> <p>16 Q. Do you recall, in fact, that</p> <p>17 you did read the document and, in turn,</p> <p>18 distributed these ideas to the industry</p> <p>19 through the United Voices newsletter?</p> <p>20 A. Again, this is --</p> <p>21 Q. We looked at it earlier. If</p> <p>22 you don't recall, it's Exhibit 11.</p> <p>23 A. I don't recall. I don't</p> <p>24 recall.</p> <p>25 Q. It's Exhibit 11. Why don't you</p>	<p style="text-align: right;">672</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Then there's the 1, 2, 3, 4</p> <p>4 that we just looked at.</p> <p>5 A. Yes.</p> <p>6 Q. Right?</p> <p>7 A. Yes.</p> <p>8 Q. So there's no question that you</p> <p>9 saw what Mr. Bell -- you saw this information</p> <p>10 from Mr. Bell in July of 1999 and, in fact,</p> <p>11 put it in your newsletter. Correct?</p> <p>12 A. I found no reason why that</p> <p>13 information was prohibited from being shared.</p> <p>14 Q. I just wanted, since one of</p> <p>15 your answers indicated some doubt about</p> <p>16 whether you had seen it, I just wanted the</p> <p>17 record to be clear that it's clear you saw it</p> <p>18 and you distributed it?</p> <p>19 A. I'm not questioning that. I'm</p> <p>20 just saying to you that 1999 and trying in</p> <p>21 2013 to recall something that specific, I</p> <p>22 can't --</p> <p>23 Q. Right. But --</p> <p>24 A. Unless you show me the</p> <p>25 document, I can't do that.</p>
<p style="text-align: right;">671</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 take a look at Exhibit 11?</p> <p>3 A. I'm sorry, do what?</p> <p>4 Q. Can you take a look at</p> <p>5 Exhibit 11 in your stack, please?</p> <p>6 A. Which is Exhibit 11?</p> <p>7 MS. LEVINE: This one.</p> <p>8 THE WITNESS: 11, that goes way</p> <p>9 back to the first.</p> <p>10 BY MR. OLSON:</p> <p>11 Q. To the 11th, the 11th exhibit.</p> <p>12 A. Exhibit 11?</p> <p>13 Q. Right.</p> <p>14 A. I have 11.</p> <p>15 Q. Just pull it out, this will be</p> <p>16 brief.</p> <p>17 A. Okay.</p> <p>18 Q. If you look at the bottom of</p> <p>19 page 2, we did this a couple of days ago.</p> <p>20 A. Yes.</p> <p>21 Q. "ROLLER COASTER EGG PRICE</p> <p>22 QUOTES." And then if you turn to page 3,</p> <p>23 you'll see the -- you say, "Don Bell has</p> <p>24 suggested that corrections in the nation's</p> <p>25 flock size..."</p>	<p style="text-align: right;">673</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Now that you've seen the</p> <p>3 document, you have no doubt that you saw what</p> <p>4 Mr. Bell sent you in July of 1999 and</p> <p>5 distributed it. Correct?</p> <p>6 A. Yes.</p> <p>7 Q. You can put those both aside.</p> <p>8 Now, what were your</p> <p>9 responsibilities for the export program that</p> <p>10 was managed by UEP, during the period while</p> <p>11 it was managed by UEP, while USEM was managed</p> <p>12 by UEP?</p> <p>13 A. So clear that up for me. While</p> <p>14 UEP is providing management for U.S. Egg</p> <p>15 Marketers, is that the question?</p> <p>16 Q. Right.</p> <p>17 A. Well, first of all, I had no</p> <p>18 title, so I wasn't president, CEO or anything</p> <p>19 whatsoever, they wanted to be on the cheap.</p> <p>20 So I -- my role was that as we received an</p> <p>21 inquiry from an export customer, that I would</p> <p>22 take that inquiry, try to determine how many</p> <p>23 loads they wanted, when they wanted them,</p> <p>24 what price they were willing to pay, et</p> <p>25 cetera. And then I would have a conference</p>

8 (Pages 670 to 673)

<p style="text-align: right;">674</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 call with a U.S. egg marketer, what we call</p> <p>3 then was Executive/Export Committee. So I</p> <p>4 would convey this message to the -- that</p> <p>5 committee. They would then say to me they're</p> <p>6 not interested at all or they are interested</p> <p>7 but we don't think the price is good enough,</p> <p>8 can you get 5 cents more or can we make the</p> <p>9 delivery such and such. So as such, I was</p> <p>10 kind of a go-between between that committee</p> <p>11 and the export buyer making an inquiry.</p> <p>12 Q. And what was Phyllis Blizzard's</p> <p>13 role in this process?</p> <p>14 A. Once -- once the membership had</p> <p>15 returned their ballot confirming their</p> <p>16 support for or opposed to the export, or if</p> <p>17 they confirmed their approval of the export</p> <p>18 order, then I turned it over to Phyllis who</p> <p>19 then was responsible for all the -- all the</p> <p>20 mountains of paperwork it takes from all the</p> <p>21 USDA certificates and et cetera and so forth.</p> <p>22 So she worked with the egg producers to get</p> <p>23 those eggs to the ports. She worked with the</p> <p>24 trucking companies and with the cross dock</p> <p>25 people and so forth. She handled all the</p>	<p style="text-align: right;">676</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. The letter discusses a recent</p> <p>4 export of 90 containers that have been</p> <p>5 completed. Correct?</p> <p>6 A. Yes.</p> <p>7 Q. You note that the export had</p> <p>8 accomplished its goal of improving domestic</p> <p>9 prices. Right?</p> <p>10 A. Yes.</p> <p>11 Q. And that was the primary goal</p> <p>12 of these exports. Correct?</p> <p>13 MS. LEVINE: Object to the form</p> <p>14 of the question.</p> <p>15 THE WITNESS: Exports are taken</p> <p>16 to try to address a surplus situation</p> <p>17 when the price of eggs is in very poor</p> <p>18 conditions and it is intended to try</p> <p>19 to improve the domestic price of eggs.</p> <p>20 It is not intended to short the supply</p> <p>21 of eggs. It is intended for a</p> <p>22 short-term period to improve domestic</p> <p>23 prices. There's nothing that I know</p> <p>24 of wrong with egg producers trying to</p> <p>25 correct a situation when they are</p>
<p style="text-align: right;">675</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 nitty-gritty work to make it happen.</p> <p>3 Q. So am I understanding it</p> <p>4 correctly that Ms. Blizzard would generally</p> <p>5 only become involved after the decision was</p> <p>6 made to take an export?</p> <p>7 A. Yes.</p> <p>8 Q. Up until that point, it was</p> <p>9 largely you working with the committee?</p> <p>10 A. Yes.</p> <p>11 - - -</p> <p>12 (Exhibit Gregory-80, 11/22/06</p> <p>13 Letter, Bates UE0302008 & UE0302009,</p> <p>14 was marked for identification.)</p> <p>15 - - -</p> <p>16 BY MR. OLSON:</p> <p>17 Q. Let me hand you what we've</p> <p>18 marked as Gregory-80. Please go ahead and</p> <p>19 briefly review the document. This document</p> <p>20 is Bates stamped UE0302008 through 009.</p> <p>21 A. (Reviewing document.)</p> <p>22 I've scanned it.</p> <p>23 Q. Can you identify it as a letter</p> <p>24 you wrote to USEM members on November 22,</p> <p>25 2006?</p>	<p style="text-align: right;">677</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 losing lots of money.</p> <p>3 BY MR. OLSON:</p> <p>4 Q. And the second bullet point --</p> <p>5 A. Let me make a point here, if</p> <p>6 you don't mind, Steig.</p> <p>7 Q. Well, why don't you do that</p> <p>8 when your counsel asks you questions.</p> <p>9 A. But I think that you need to</p> <p>10 understand something as well.</p> <p>11 Q. Well, you know, I'm just trying</p> <p>12 to get the facts at this point. No one is --</p> <p>13 I'm not even suggesting anything is wrong, I</p> <p>14 just want to make sure we're clear on the</p> <p>15 facts.</p> <p>16 MS. LEVINE: Mr. Olson is going</p> <p>17 to ask you questions, then I'm going</p> <p>18 to ask you all the questions that you</p> <p>19 wanted to say. It's noted in the</p> <p>20 record. We'll go back and ask about</p> <p>21 this document. Okay?</p> <p>22 THE WITNESS: Okay.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. Tell you what, since you look</p> <p>25 like you really want to make the point now,</p>

9 (Pages 674 to 677)

<p style="text-align: right;">678</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 why don't you go ahead.</p> <p>3 A. Well, my point is that like so</p> <p>4 many agriculture products, eggs are a</p> <p>5 commodity. We cannot perfectly have the</p> <p>6 right number of eggs all the time. We have</p> <p>7 high -- as I told you before, we have high</p> <p>8 demand and low demand periods. We unlike</p> <p>9 many products in agriculture do not have a</p> <p>10 government subsidy. We do not have like a</p> <p>11 crop insurance program. We do not have a</p> <p>12 guaranteed price control. We have nothing</p> <p>13 from the government to assist egg farmers</p> <p>14 with managing their supply or managing their</p> <p>15 profitability. Egg farmers, therefore, have</p> <p>16 to find sources for the market of those eggs</p> <p>17 when the conditions are such that we're</p> <p>18 producing far more than needed. So I want</p> <p>19 you to understand that there is no other</p> <p>20 recourse for egg farmers as an insurance or</p> <p>21 subsidy other than the recourse is go</p> <p>22 bankrupt.</p> <p>23 Q. Now, I've seen references to</p> <p>24 something that's called a DOJ marketing</p> <p>25 order.</p>	<p style="text-align: right;">680</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 egg farmers were just too damned independent</p> <p>3 and they wanted to be able to grow when they</p> <p>4 wanted to, they wanted to have acquisition</p> <p>5 when they wanted to. So they -- not a</p> <p>6 sufficient number of them were interested in</p> <p>7 it nor did we believe that USDA would permit</p> <p>8 it to be done. Other than that, I can't</p> <p>9 recall and I'm not -- I hope my memory is</p> <p>10 good enough for that. If that's -- is it</p> <p>11 Richard, is that what you're referring to?</p> <p>12 MR. CAMPBELL: It wasn't from</p> <p>13 me.</p> <p>14 THE WITNESS: It wasn't what you</p> <p>15 were referring to. Okay. Then other</p> <p>16 than that, I don't know what we're</p> <p>17 talking about.</p> <p>18 BY MR. OLSON:</p> <p>19 Q. No, that was helpful.</p> <p>20 There's a second bullet on</p> <p>21 Gregory-80, and, again, we're just covering</p> <p>22 some of the facts here to make sure we</p> <p>23 understand them.</p> <p>24 It says, "Since UEP assumed the</p> <p>25 management of USEM, in the fall of 2000, we</p>
<p style="text-align: right;">679</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. DOJ.</p> <p>3 Q. Or some sort of marketing order</p> <p>4 that the egg industry could apply for. Do</p> <p>5 you know what I'm talking about?</p> <p>6 A. I do not know what that is.</p> <p>7 Q. Are you aware of the egg</p> <p>8 industry ever seeking a government program</p> <p>9 through Congress to manage supply?</p> <p>10 A. Now, the only time I can recall</p> <p>11 this, and, again, you're trying to tap my</p> <p>12 memory, and that is that -- this could have</p> <p>13 been back as far as the 1970s, 1980s. I</p> <p>14 don't know when it was. The industry was in</p> <p>15 bad shape and there were some producers that</p> <p>16 said, you know what we ought to do is be like</p> <p>17 Canada who has a supply program with the</p> <p>18 government. And so there was interest in</p> <p>19 that we would never ever have a profitable</p> <p>20 industry unless we found some way to have a</p> <p>21 program like Canada.</p> <p>22 So there was a series of</p> <p>23 meetings across the country soliciting</p> <p>24 opinions from egg farmers. At the end, a</p> <p>25 couple of things came to our -- one is that</p>	<p style="text-align: right;">681</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 sold five...sizable exports prior to the</p> <p>3 recent sale?"</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Is that consistent with your</p> <p>7 knowledge?</p> <p>8 A. Again, without me looking at</p> <p>9 it, but that sounds accurate.</p> <p>10 Q. And then the next sentence</p> <p>11 says, "We had calculated past export benefits</p> <p>12 of being worth anywhere from as little as 6</p> <p>13 cents per dozen to as much as 24 cents per</p> <p>14 dozen during the period of delivery of each</p> <p>15 export."</p> <p>16 Do you see that?</p> <p>17 A. The key point there is during</p> <p>18 the period of delivery of each export.</p> <p>19 Underline that.</p> <p>20 Q. What does that mean?</p> <p>21 A. That means that typically an</p> <p>22 export would be taken for delivery over</p> <p>23 generally no more than four weeks' period of</p> <p>24 time. So during that period of the export</p> <p>25 when we're trying to fill orders or trying to</p>

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<p style="text-align: right;">682</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 buy eggs and so forth, that there will be --</p> <p>3 like any market, stock market, whatever it</p> <p>4 is, it is based upon bids and offers and, you</p> <p>5 know, and sales and that kind of thing. So</p> <p>6 during that period of time, as this is</p> <p>7 happening, other than a couple of times I</p> <p>8 think I recognize, that the market would go</p> <p>9 up during that short period of time.</p> <p>10 Q. Okay. And so the 6 cents per</p> <p>11 dozen and 24 cents per dozen is how much the</p> <p>12 egg price in the market went up during that</p> <p>13 period of time. Right?</p> <p>14 MS. LEVINE: Object to the form</p> <p>15 of the question.</p> <p>16 THE WITNESS: I'm not an</p> <p>17 economist on this. All I'm referring</p> <p>18 to is what the Urner Barry quote was.</p> <p>19 BY MR. OLSON:</p> <p>20 Q. That was my next question.</p> <p>21 A. Yes.</p> <p>22 Q. So you would look to Urner</p> <p>23 Barry for that?</p> <p>24 A. Right.</p> <p>25 Q. I think you can put that aside.</p>	<p style="text-align: right;">684</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Object to the form</p> <p>3 of the question.</p> <p>4 THE WITNESS: I'm sorry, say</p> <p>5 that --</p> <p>6 BY MR. OLSON:</p> <p>7 Q. For those uses -- for those</p> <p>8 parts of what Mr. Bell provided that were</p> <p>9 useful for UEP, UEP would rely on Mr. Bell's</p> <p>10 statistical work?</p> <p>11 MS. LEVINE: Object to the form</p> <p>12 of the question. Calls for speculation.</p> <p>13 THE WITNESS: He was one source</p> <p>14 of information that we relied upon,</p> <p>15 yes.</p> <p>16 - - -</p> <p>17 (Exhibit Gregory-81, 4/17/07</p> <p>18 Letter, Bates NUCAL-08md20002-0000456</p> <p>19 & NUCAL-08md20002-0000457, was marked</p> <p>20 for identification.)</p> <p>21 - - -</p> <p>22 BY MR. OLSON:</p> <p>23 Q. Let me hand you what we've</p> <p>24 marked as Gregory-81. This is a document</p> <p>25 Bates stamped NUCAL-08md2002-0000456 through</p>
<p style="text-align: right;">683</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 You know, I hate to be</p> <p>3 backwards, but I forgot to ask you one</p> <p>4 question on 79 about Mr. Bell's statistics.</p> <p>5 A. Yes.</p> <p>6 Q. What generally would UEP do</p> <p>7 with the statistical information that Mr.</p> <p>8 Bell provided?</p> <p>9 A. Quite honestly, he would just</p> <p>10 flood you with statistics to a point that it</p> <p>11 was just overkill, and we would be selective</p> <p>12 of what he had there as it relates to some</p> <p>13 history of what the inventory was, what the</p> <p>14 hatch was. So there was limited amount of</p> <p>15 information that we were really interested</p> <p>16 in. But he just -- he flooded you with</p> <p>17 statistics.</p> <p>18 Q. So he gave you more than you</p> <p>19 needed but --</p> <p>20 A. Yes.</p> <p>21 Q. -- certain parts of it were</p> <p>22 useful for UEP?</p> <p>23 A. Yes.</p> <p>24 Q. And for those uses, UEP would</p> <p>25 rely on Mr. Bell's statistics?</p>	<p style="text-align: right;">685</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 457.</p> <p>3 Mr. Gregory, if you could just</p> <p>4 give this a look and just then identify what</p> <p>5 this type of document is?</p> <p>6 A. Just for the record, would</p> <p>7 you -- would you tell me what you said about</p> <p>8 the dates?</p> <p>9 Q. I haven't said anything about</p> <p>10 the date.</p> <p>11 A. I thought you said 2002, I'm</p> <p>12 sorry.</p> <p>13 Q. I was just reading this long</p> <p>14 number at the bottom which is -- was stamped</p> <p>15 on the document.</p> <p>16 A. Okay. I'm sorry. I'm sorry.</p> <p>17 I apologize. So I'm familiar with this.</p> <p>18 Q. And what type of document is</p> <p>19 this?</p> <p>20 A. What this is, is after the</p> <p>21 membership has approved an export, what we do</p> <p>22 then, what U.S. Egg Marketers did then was</p> <p>23 the total export was shared by the percentage</p> <p>24 each member -- the percentage of hens each</p> <p>25 member owned in relationship to what the</p>

11 (Pages 682 to 685)

<p style="text-align: right;">686</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 total cooperative membership layers were.</p> <p>3 And what this was -- what we -- we would</p> <p>4 calculate that out and tell each member how</p> <p>5 many cases they were obligated to fill. And</p> <p>6 this letter is acknowledging that an export</p> <p>7 has been taken and a year percentage share of</p> <p>8 it is X number of cases. It's identifying</p> <p>9 what kind of containers those eggs have to be</p> <p>10 in, what kind of eggs they are. It is then</p> <p>11 going forward and telling about what the</p> <p>12 price of the sale was. It is then asking</p> <p>13 them whether they are going to ship their own</p> <p>14 eggs or whether they want UEP egg traders to</p> <p>15 purchase those eggs for them.</p> <p>16 Q. This document is dated</p> <p>17 April 17, 2007. Right?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recall what egg prices</p> <p>20 were doing in 2007?</p> <p>21 A. That is six years ago. No, I</p> <p>22 do not know.</p> <p>23 Q. Do you recall that 2007 was a</p> <p>24 year of record egg prices in the industry?</p> <p>25 A. We had come out of a disaster</p>	<p style="text-align: right;">688</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 of 2007 egg prices. Right?</p> <p>3 A. Yes.</p> <p>4 Q. Does it refresh your</p> <p>5 recollection that it had been a year of</p> <p>6 record egg prices?</p> <p>7 A. Yes.</p> <p>8 Q. And you provide some reasons</p> <p>9 that you think were the reason for the</p> <p>10 extremely good prices in the industry that</p> <p>11 year. Right?</p> <p>12 A. Yes. Again, I'm not an</p> <p>13 economist, but I'm giving you my opinion of</p> <p>14 what I think some of those things were. But</p> <p>15 I want to highlight in this that all of you</p> <p>16 may be aware of the government's ethanol</p> <p>17 policy and what happened as a result of</p> <p>18 taking corn away from a food product. It</p> <p>19 became an energy product and it drove up all</p> <p>20 the cost of transportation and it drove up</p> <p>21 the cost of all food products that were</p> <p>22 derived from corn products.</p> <p>23 Q. Now, when you would put</p> <p>24 something like this together for United</p> <p>25 Voices, would you work on that by yourself or</p>
<p style="text-align: right;">687</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 situation in 2005 and 2006, and I think</p> <p>3 because so many people were going broke or</p> <p>4 were having to reduce their flock, sell hens</p> <p>5 early, all of those kind of things, they had</p> <p>6 lost so much money that I suspect, without</p> <p>7 looking I don't know, but I suspect that</p> <p>8 probably by this time things may have begun</p> <p>9 to turn around.</p> <p>10 - - -</p> <p>11 (Exhibit Gregory-82, 1/3/08</p> <p>12 United Voices, Bates UE0619780 -</p> <p>13 UE0619789, was marked for</p> <p>14 identification.)</p> <p>15 - - -</p> <p>16 BY MR. OLSON:</p> <p>17 Q. Let me hand you Gregory-82, see</p> <p>18 if it refreshes your recollection. This is a</p> <p>19 document Bates stamped UE0619780 through 789.</p> <p>20 Mr. Gregory, just we're only</p> <p>21 looking at a small portion. Can you identify</p> <p>22 this as United Voices publication that you</p> <p>23 edited dated January 3, 2008?</p> <p>24 A. Yes.</p> <p>25 Q. And the first page is a review</p>	<p style="text-align: right;">689</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 would others help you?</p> <p>3 A. No. I would say that these are</p> <p>4 my opinions and my estimations and so forth.</p> <p>5 Q. And I take it that you would</p> <p>6 make an effort to be as accurate as possible.</p> <p>7 MS. LEVINE: Object to the form</p> <p>8 of the question.</p> <p>9 THE WITNESS: I would -- I think</p> <p>10 that I would not purposely try to do</p> <p>11 something that I thought was wrong.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. And the first two reasons you</p> <p>14 give for the extremely good prices are these</p> <p>15 reasons related to ethanol as you just</p> <p>16 mentioned. Right?</p> <p>17 A. Yes.</p> <p>18 Q. And the third is that the</p> <p>19 animal welfare guidelines had continued to</p> <p>20 reduce the number of hens per house. That</p> <p>21 was your belief at the time. Correct?</p> <p>22 A. But I want you to highlight,</p> <p>23 underline, per house.</p> <p>24 Q. And you -- that was your belief</p> <p>25 at the time. Correct?</p>

12 (Pages 686 to 689)

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<p style="text-align: right;">690</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And your belief at the time was</p> <p>4 that was at least one of the reasons for the</p> <p>5 extremely good prices in the egg industry in</p> <p>6 2007. Correct?</p> <p>7 A. Yes, I want to go back and</p> <p>8 point to you that 2005 and 2006 we overbuilt,</p> <p>9 the industry nearly went bankrupt and by the</p> <p>10 time we get in 2007, they have begun to make</p> <p>11 adjustments.</p> <p>12 I want to go back and say did I</p> <p>13 think that was a part of it, yes. But I</p> <p>14 think the major reason has always been an</p> <p>15 irritant to me that I think ethanol is an</p> <p>16 absolute stupid energy policy and it drove up</p> <p>17 costs unbelievably.</p> <p>18 Q. Now, you referred earlier to</p> <p>19 the fact that you didn't think the USDA would</p> <p>20 support a supply management program. Do you</p> <p>21 recall saying that?</p> <p>22 A. Yes, I did say that.</p> <p>23 Q. What's the basis for your</p> <p>24 belief that the USDA would not have supported</p> <p>25 a supply management program?</p>	<p style="text-align: right;">692</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 that.</p> <p>3 BY MR. OLSON:</p> <p>4 Q. You don't recall thinking about</p> <p>5 that at all?</p> <p>6 A. No.</p> <p>7 Q. What is PEPA, P-E-P-A?</p> <p>8 A. There was, maybe it still is, I</p> <p>9 don't know, but, yeah, I think it is, it's an</p> <p>10 organization in California and it's the</p> <p>11 Pacific Egg and Poultry Association.</p> <p>12 Q. And it held an annual</p> <p>13 convention?</p> <p>14 A. They have, yes.</p> <p>15 Q. Would you go every year to the</p> <p>16 annual convention?</p> <p>17 A. No.</p> <p>18 Q. From time to time you would go?</p> <p>19 A. Only when I was invited.</p> <p>20 - - -</p> <p>21 (Exhibit Gregory-83, PowerPoint</p> <p>22 presentation, Bates UE0533500 -</p> <p>23 UE0533514, was marked for</p> <p>24 identification.)</p> <p>25 - - -</p>
<p style="text-align: right;">691</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Objection. Calls</p> <p>3 for complete speculation from this</p> <p>4 witness.</p> <p>5 THE WITNESS: We -- I don't</p> <p>6 recall. Again, I'm telling you that I</p> <p>7 don't know when it happened, I think</p> <p>8 it was like 1970, 1980s. I don't know</p> <p>9 what it was. A lot of those things</p> <p>10 depended upon who was the secretary of</p> <p>11 agriculture at the time. It depends</p> <p>12 on what politics at the time is. And</p> <p>13 so I don't know how I drew that</p> <p>14 conclusion. But I do recall that we</p> <p>15 drew the conclusion we didn't think</p> <p>16 USDA would be receptive to that.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Did you consider in the 2000s</p> <p>19 whether the USDA would be receptive to a</p> <p>20 supply management program?</p> <p>21 MS. SOUTHALL: Objection to the</p> <p>22 form.</p> <p>23 THE WITNESS: You would have to</p> <p>24 show me a document of that because I</p> <p>25 certainly don't recall anything like</p>	<p style="text-align: right;">693</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. Let me hand you what we've</p> <p>4 marked Gregory-83.</p> <p>5 A. We're done with these two?</p> <p>6 Q. Yes.</p> <p>7 This is a document that's Bates</p> <p>8 stamped UE0533500 through 514. I'll ask if</p> <p>9 you can identify it as a presentation that</p> <p>10 you gave at the PEPA annual convention in</p> <p>11 March 2008?</p> <p>12 A. The document says so.</p> <p>13 Q. Have you had a chance to flip</p> <p>14 through the document?</p> <p>15 A. Just quickly.</p> <p>16 Q. Can you identify this as the</p> <p>17 presentation you gave at the PEPA annual</p> <p>18 convention in 2008?</p> <p>19 A. Yes.</p> <p>20 Q. And you titled it an "Egg</p> <p>21 Economies Report." Right?</p> <p>22 A. Yes.</p> <p>23 Q. Now, the slide one, first slide</p> <p>24 of the presentation is titled, "Factors</p> <p>25 Attributed To 2007 Egg Prices." Right?</p>

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<p style="text-align: right;">694</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And the first one, first bullet</p> <p>4 is this "Financial losses of 2005 and 2006"</p> <p>5 that you referred to. Right?</p> <p>6 A. Yes.</p> <p>7 Q. You also referred to "Flock</p> <p>8 Reduction (Better supply management)."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What are you referring to</p> <p>12 there?</p> <p>13 A. After having suffered the</p> <p>14 extreme financial losses of 2000 and -- 2005</p> <p>15 and 2006, egg farmers were recognizing that</p> <p>16 they could not continue to do that, and my</p> <p>17 belief at that point in time that they were</p> <p>18 doing a better job of managing their supply.</p> <p>19 Q. The third bullet is "UEP</p> <p>20 Certified Cage Space Requirements." Right?</p> <p>21 A. Yes.</p> <p>22 Q. And the fourth is "Prohibited</p> <p>23 backfilling of cages." Right?</p> <p>24 A. Yes.</p> <p>25 Q. You're referring to the UEP</p>	<p style="text-align: right;">696</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 always that way. An egg -- and yet the egg</p> <p>3 farmer has high demand periods at Easter,</p> <p>4 Thanksgiving and Christmas. He needs to</p> <p>5 maintain a flock size that can meet his</p> <p>6 maximum demand. That then means that those</p> <p>7 same chickens are still laying eggs in that</p> <p>8 period between Easter and Labor Day, and he</p> <p>9 doesn't have a market for all those eggs.</p> <p>10 Sometimes it's as much as 20 percent</p> <p>11 difference. So what I'm talking about here</p> <p>12 is they're finally beginning to recognize</p> <p>13 that this is a problem and they need to do</p> <p>14 something better to manage that period of low</p> <p>15 demand.</p> <p>16 Q. Let's look at -- well, in fact,</p> <p>17 on that point, UEP had suggested ways that</p> <p>18 the industry could manage that period of</p> <p>19 demand in 2007. Right?</p> <p>20 A. I don't know when we did it,</p> <p>21 but yes, I know we have done that.</p> <p>22 Q. And in 2007 the producers did</p> <p>23 what UEP had recommended?</p> <p>24 MS. LEVINE: Object to the form.</p> <p>25 Calls for speculation.</p>
<p style="text-align: right;">695</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 certified program prohibiting that. Right?</p> <p>3 A. Yes.</p> <p>4 Q. And then the next bullet is</p> <p>5 "Exports." Right?</p> <p>6 A. Yes.</p> <p>7 Q. That's again the USEM exports.</p> <p>8 Right?</p> <p>9 A. Yes.</p> <p>10 Q. Let's look at slide -- let's</p> <p>11 look at the slide that discusses --</p> <p>12 A. Could I just clear up one more</p> <p>13 thing there?</p> <p>14 Q. Sure.</p> <p>15 A. You fail to go over the reduced</p> <p>16 egg supply during weeks between Easter and</p> <p>17 Labor Day.</p> <p>18 Q. Well, we can -- okay. We can't</p> <p>19 go over everything in these documents, but if</p> <p>20 you want to make a point about that --</p> <p>21 A. Right. But anyway, I think you</p> <p>22 need to understand is that the poorest egg</p> <p>23 demand period of the year is between Labor --</p> <p>24 is between Easter and Labor Day. Why, I</p> <p>25 don't know but it is. Historically it's</p>	<p style="text-align: right;">697</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: I would like for</p> <p>3 it to be noted that in all the</p> <p>4 recommendations that we ever made,</p> <p>5 they were recommendations and there</p> <p>6 was no requirement that they had to do</p> <p>7 this. It was voluntary. And there</p> <p>8 was no penalty if you didn't. And</p> <p>9 quite honestly, we were a complete</p> <p>10 failure every time.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. Except this time. Right?</p> <p>13 Didn't you just say that you were a success</p> <p>14 in that this time?</p> <p>15 MR. McKENNEY: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: No, I did not say</p> <p>18 that. I said that the producers had</p> <p>19 recognized after severe financial</p> <p>20 losses in 2005, 2006, they were doing</p> <p>21 a better job of managing supply.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. Well, you also said that the</p> <p>24 record egg prices in 2007 were partly due to</p> <p>25 a reduced egg supply during this period</p>

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<p style="text-align: right;">698</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 between Easter and Labor Day. Right?</p> <p>3 A. Right. What I said to you was</p> <p>4 that I think after all this history, they had</p> <p>5 finally began to recognize that this is not a</p> <p>6 good time to be holding a whole lot of hens.</p> <p>7 So I think they were doing something about</p> <p>8 that.</p> <p>9 Q. And they were doing what UEP</p> <p>10 had recommended. Right?</p> <p>11 MS. LEVINE: Object to the form</p> <p>12 of the question. Calls for speculation.</p> <p>13 THE WITNESS: I have no</p> <p>14 confirmation that they were doing</p> <p>15 that. Because, again, I said to you</p> <p>16 there is no -- there is -- it's a</p> <p>17 voluntary -- it would have been</p> <p>18 voluntary. We have no way of</p> <p>19 following up to see if they did, and</p> <p>20 there was no penalty if they did not.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. Well, you talk to egg producers</p> <p>23 all the time. Right?</p> <p>24 A. Quite a lot. I love those</p> <p>25 people.</p>	<p style="text-align: right;">700</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 profitability of their industry, and</p> <p>3 so, yes, they would want to engage in</p> <p>4 that conversation at times,</p> <p>5 particularly when things were in</p> <p>6 terrible shape.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. Let's turn to the slide that</p> <p>9 ends in 05. This is a slide that you put</p> <p>10 together. Right?</p> <p>11 A. Yes.</p> <p>12 Q. "UEP Certified Program -</p> <p>13 Reduces Flock Size." Right?</p> <p>14 A. Yes.</p> <p>15 Q. So there's a success. Right?</p> <p>16 A. Yes, but you need to point out</p> <p>17 that, again, there was houses that needed to</p> <p>18 be built, new houses that needed to be built</p> <p>19 to replace the hens they were losing in</p> <p>20 existing houses, and the financial conditions</p> <p>21 in 2005 and 2006 were so bad that they could</p> <p>22 not afford to build the new houses that they</p> <p>23 needed nor would the bankers loan them any</p> <p>24 money because of that. So here we had a need</p> <p>25 to build new housing and they couldn't afford</p>
<p style="text-align: right;">699</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And you talk about what they</p> <p>3 were doing with their production, didn't you?</p> <p>4 MS. LEVINE: Object to the form</p> <p>5 of the question. Calls for speculation.</p> <p>6 THE WITNESS: You know, we have</p> <p>7 conversations about a lot of things,</p> <p>8 and I can't recall, you know -- yes,</p> <p>9 there would be times I would talk</p> <p>10 about that.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. Including how they were</p> <p>13 managing their production, you would talk to</p> <p>14 them about that?</p> <p>15 A. You know what, this is -- this</p> <p>16 answer is going to surprise you, but very</p> <p>17 seldom did we actually have those kind of</p> <p>18 conversations.</p> <p>19 Q. But you're not suggesting that</p> <p>20 you never had those types of conversations?</p> <p>21 MS. LEVINE: Object to the form</p> <p>22 of the question.</p> <p>23 THE WITNESS: These are people</p> <p>24 that are in the business and they have</p> <p>25 a great deal of interest in the</p>	<p style="text-align: right;">701</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 to do so.</p> <p>3 Q. Let's talk about what's</p> <p>4 discussed in this slide. I want to make sure</p> <p>5 that we all understand it. So the first</p> <p>6 bullet says, "Let's assume...producers were</p> <p>7 providing cage space of 53.3 square inches</p> <p>8 prior to 2002." Do you know where you got</p> <p>9 that number from?</p> <p>10 A. No, I do not. I think that it</p> <p>11 was generally thinking that there were some</p> <p>12 people that were as low as I said before,</p> <p>13 43 inches, some people at 48 inches. But I</p> <p>14 think that the majority of people were, based</p> <p>15 upon what we knew about cages and birds, we</p> <p>16 believe that 53.3 was probably the majority.</p> <p>17 Q. Or maybe the average?</p> <p>18 A. No, I don't really think it was</p> <p>19 the average.</p> <p>20 Q. The majority?</p> <p>21 A. I think it was probably the</p> <p>22 majority.</p> <p>23 Q. Second bullet you say, "By 2007</p> <p>24 this house would have been populated with</p> <p>25 16.7% fewer hens when using the 'house</p>

15 (Pages 698 to 701)

<p style="text-align: right;">702</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 averaging' space allowance."</p> <p>3 A. Yes, but I want you to note</p> <p>4 that that is talking about per house, that</p> <p>5 house.</p> <p>6 Q. Right. I got that.</p> <p>7 A. We're not talking about a</p> <p>8 national figure.</p> <p>9 Q. My question is actually more</p> <p>10 about the next one. It says, "Layer houses</p> <p>11 filled in the fall of 2008 and thereafter</p> <p>12 will see further reduction by 3.7% when using</p> <p>13 the 'house averaging' space allowance." What</p> <p>14 does that mean?</p> <p>15 A. It means that when you move, I</p> <p>16 don't remember the dates, but when you move</p> <p>17 from 64 to 67 square inches per bird, there</p> <p>18 will be -- you know, you're asking me to look</p> <p>19 back on it, but -- so when we move from the</p> <p>20 64 to the 67 square inches, that particular</p> <p>21 house, those existing houses are going to</p> <p>22 have 3.7 less, percent less birds in the</p> <p>23 houses.</p> <p>24 Q. And then the next bullet, I</p> <p>25 won't read it all, but is basically saying</p>	<p style="text-align: right;">704</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 a major reason we destroyed good prices."</p> <p>3 Right?</p> <p>4 A. Right.</p> <p>5 Q. That was your view at the time.</p> <p>6 Right?</p> <p>7 A. Yes.</p> <p>8 Q. And the third bullet says, "UEP</p> <p>9 Certified program then develops policy to</p> <p>10 prohibit backfilling cages." Right?</p> <p>11 A. Yes.</p> <p>12 Q. True statement?</p> <p>13 A. Yes.</p> <p>14 Q. And then you said, "The market</p> <p>15 now reflects the benefits of that policy."</p> <p>16 And that was true as well, right?</p> <p>17 A. Yes, but you're trying to imply</p> <p>18 that backfilling was only done as a supply.</p> <p>19 That was not the reason, this is what I'm</p> <p>20 trying to say, is that -- is that farmers,</p> <p>21 because there's no prohibition against it,</p> <p>22 they were doing a practice that they had</p> <p>23 never done before and now they're making</p> <p>24 profits and they think, oh, if I can just put</p> <p>25 more chickens in that house and backfill</p>
<p style="text-align: right;">703</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 that under the certified program, we would</p> <p>3 see further reductions in late 2008 and 2009</p> <p>4 by approximately 8.9 million hens. Right?</p> <p>5 A. Yes.</p> <p>6 Q. Now, let's look at the next</p> <p>7 slide, "Backfilling Cages."</p> <p>8 A. The next slide?</p> <p>9 Q. Yes. You put this slide</p> <p>10 together, too. Correct?</p> <p>11 A. Yes.</p> <p>12 Q. First bullet says, "From the</p> <p>13 summer of 2003 through the spring of 2004,</p> <p>14 the industry enjoyed very profitable prices."</p> <p>15 Right?</p> <p>16 A. Yes.</p> <p>17 Q. True statement?</p> <p>18 A. I'd have to review that, but it</p> <p>19 must have been, I wrote it.</p> <p>20 Q. And the next bullet says, "To</p> <p>21 take advantage of good prices - producers</p> <p>22 elected to back fill empty cages." Right?</p> <p>23 A. Yes.</p> <p>24 Q. "This added several million</p> <p>25 hens to the nation's flock inventory and was</p>	<p style="text-align: right;">705</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 those cages, I can maximize our profits.</p> <p>3 When, in fact, what it did, it destroyed, but</p> <p>4 most of all, it was jeopardizing the intent</p> <p>5 of the UEP certified program.</p> <p>6 Q. Well, you suggest -- I'm not</p> <p>7 trying to imply anything. I basically just</p> <p>8 read what you had written.</p> <p>9 A. I know, but --</p> <p>10 Q. Is there anything on this</p> <p>11 page --</p> <p>12 A. There was nothing but --</p> <p>13 Q. Hold on. Let me ask the</p> <p>14 question.</p> <p>15 Is there anything on this page</p> <p>16 or anywhere in this presentation that you</p> <p>17 gave at the PEPA annual convention that</p> <p>18 suggests that the problem with backfilling</p> <p>19 had anything at all to do with animal</p> <p>20 welfare?</p> <p>21 MS. LEVINE: Object to the form</p> <p>22 of the question.</p> <p>23 THE WITNESS: You're trying to</p> <p>24 take my words and imply that it was a</p> <p>25 supply problem, and I'm saying to you,</p>

16 (Pages 702 to 705)

<p style="text-align: right;">706</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 I'm only reporting what is going on</p> <p>3 and I object to what you're trying</p> <p>4 to -- trying to put words into this</p> <p>5 that this was not the intention.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. Mr. Gregory, is there anything</p> <p>8 either on this slide or anywhere in the</p> <p>9 presentation that suggests that the problem</p> <p>10 with producers backfilling had anything at</p> <p>11 all to do with animal welfare?</p> <p>12 A. Again, I would say to you, yes,</p> <p>13 that's true, but you are misreading it from</p> <p>14 -- different from what this is really all</p> <p>15 about.</p> <p>16 Q. What this says is that the</p> <p>17 problem with backfilling is it destroyed good</p> <p>18 prices. Right? That's what it says?</p> <p>19 A. You know what, you've asked</p> <p>20 that question enough times, I've tried to</p> <p>21 answer it enough times, why don't you move</p> <p>22 on.</p> <p>23 Q. And the prohibition of</p> <p>24 backfilling, that was another success.</p> <p>25 Right?</p>	<p style="text-align: right;">708</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. You can do that again if that's</p> <p>3 what you -- if that's -- what number is that?</p> <p>4 Q. 82, this is your United Voices,</p> <p>5 your review of 2007 egg prices where you say,</p> <p>6 "As we come to the...year of record egg</p> <p>7 prices....," and later you refer to them as</p> <p>8 extremely good prices.</p> <p>9 A. If that's what it says, that's</p> <p>10 what it says.</p> <p>11 Q. So when backfilling</p> <p>12 succeeded -- the prohibition of backfilling</p> <p>13 succeeded --</p> <p>14 A. Let me ask you a question. Why</p> <p>15 in hell are you so concerned about</p> <p>16 backfilling when what we're talking about is</p> <p>17 animal welfare, trying to improve welfare of</p> <p>18 animals? Are you trying to discredit -- are</p> <p>19 you trying to -- I mean, I just -- this blows</p> <p>20 my mind how you nitpick something like that</p> <p>21 when all we're trying to do is improve the</p> <p>22 welfare of animals.</p> <p>23 Q. There are two reasons why I'm</p> <p>24 spending time on this.</p> <p>25 A. Because backfilling had nothing</p>
<p style="text-align: right;">707</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. No. No. That doesn't -- It</p> <p>3 was a success in the fact that it was to</p> <p>4 provide for a more humane animal welfare</p> <p>5 program and to meet the intent of what these</p> <p>6 space guidelines were.</p> <p>7 Q. You suggested that for all UEP</p> <p>8 did to try to help the industry manage</p> <p>9 supply, it was never successful, but, in</p> <p>10 fact, what you told PEPA in 2008 was that UEP</p> <p>11 stepping up and prohibiting backfilling was a</p> <p>12 major reason that the market had benefited in</p> <p>13 2007. Right?</p> <p>14 MS. LEVINE: Object to the form</p> <p>15 of the question.</p> <p>16 THE WITNESS: No, I don't think</p> <p>17 it says that. It says the market now</p> <p>18 reflects the benefit of that policy.</p> <p>19 BY MR. OLSON:</p> <p>20 Q. And the market reflected it by</p> <p>21 record egg prices. Correct?</p> <p>22 A. I don't know whether it was</p> <p>23 record egg prices then or not.</p> <p>24 Q. Well, let's look back then at</p> <p>25 Exhibit 82.</p>	<p style="text-align: right;">709</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 to do with the supply/demand program.</p> <p>3 Q. There are two reasons why I'm</p> <p>4 spending time with this. First is you</p> <p>5 suggested that all the work UEP did to help</p> <p>6 manage supply was never successful. And it</p> <p>7 seems to me that's directly contradictory to</p> <p>8 what you say -- what you said at this --</p> <p>9 A. Because backfilling is not a</p> <p>10 supply/demand recommendation is what I'm</p> <p>11 saying to you.</p> <p>12 Q. Is that what you told the PEPA</p> <p>13 annual convention in 2008?</p> <p>14 A. I did not tell the PEPA people</p> <p>15 that this was a supply/demand recommendation</p> <p>16 and that it responded to a supply/demand</p> <p>17 recommendation. Nowhere does that say that.</p> <p>18 Q. Did you tell the PEPA annual</p> <p>19 convention that prohibiting backfilling had</p> <p>20 anything at all to do with animal welfare?</p> <p>21 MR. McKENNEY: Objection. Asked</p> <p>22 and answered.</p> <p>23 THE WITNESS: I don't recall.</p> <p>24 I'm tired of the question. I don't</p> <p>25 recall.</p>

17 (Pages 706 to 709)

<p style="text-align: right;">710</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. You can put that aside.</p> <p>4 - - -</p> <p>5 (Exhibit Gregory-84, 7/21/08</p> <p>6 E-mail with attachment, Bates</p> <p>7 UE0354878 - UE0354882, was marked for</p> <p>8 identification.)</p> <p>9 - - -</p> <p>10 BY MR. OLSON:</p> <p>11 Q. Let me hand you what's marked</p> <p>12 Gregory-84. This is Bates stamped UE0354878</p> <p>13 through 882. Why don't you briefly scan the</p> <p>14 document, let us know when you're done.</p> <p>15 A. (Reviewing document.)</p> <p>16 I've scanned it.</p> <p>17 Q. All right. Can you identify</p> <p>18 the cover e-mail as one that you sent on</p> <p>19 July 28 -- 21, 2008?</p> <p>20 A. Yes, I do.</p> <p>21 Q. And you attach a document that</p> <p>22 you had written. Correct?</p> <p>23 A. Yes.</p> <p>24 Q. Now, this document that you had</p> <p>25 written concerns the fact that Walmart had</p>	<p style="text-align: right;">712</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 first became an issue because of some</p> <p>3 of the egg suppliers to Walmart were</p> <p>4 now competing against something they</p> <p>5 knew did not know much of the -- they</p> <p>6 had very little information about.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. You referred to phone calls you</p> <p>9 had received from egg farmers?</p> <p>10 A. Yes.</p> <p>11 Q. What do you recall about who</p> <p>12 called you?</p> <p>13 A. You want me to name all the</p> <p>14 people that called me?</p> <p>15 Q. About this topic.</p> <p>16 A. That's what I'm saying, you</p> <p>17 want me to name all the people that called</p> <p>18 me?</p> <p>19 Q. How many -- about this Walmart</p> <p>20 topic?</p> <p>21 A. Yes.</p> <p>22 Q. How many was it approximately?</p> <p>23 I mean, are we talking dozens?</p> <p>24 A. Oh, God. See, now this is</p> <p>25 where I have a problem. If I say 24 and then</p>
<p style="text-align: right;">711</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 apparently been considering purchasing eggs</p> <p>3 that were certified under this Process</p> <p>4 Verified Program. Right?</p> <p>5 A. I don't believe the word is</p> <p>6 certified. I believe the word is verified.</p> <p>7 Q. That's what I meant to say.</p> <p>8 That were verified under the Process Verified</p> <p>9 Program. Right?</p> <p>10 A. Yes.</p> <p>11 Q. And how did you learn that?</p> <p>12 A. I probably receive more irate</p> <p>13 phone calls from egg farmers across the</p> <p>14 country on this subject than anything I have</p> <p>15 ever received from both Walmart suppliers as</p> <p>16 well as nonsuppliers. And so I learned about</p> <p>17 it thataway.</p> <p>18 Q. So some UEP members called you</p> <p>19 and told you that -- that Walmart was</p> <p>20 considering purchasing eggs under the Process</p> <p>21 Verified Program?</p> <p>22 MS. LEVINE: Object to the form</p> <p>23 of the question. Mischaracterizes the</p> <p>24 witness' answer. Asked and answered.</p> <p>25 THE WITNESS: As I recall, this</p>	<p style="text-align: right;">713</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 it turns out later it's 25, you know, I'm</p> <p>3 not --</p> <p>4 MS. LEVINE: I think on this one</p> <p>5 Mr. Olson just wants an approximation.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. Are we talking one or two or</p> <p>8 are we talking more than 20?</p> <p>9 A. No, no, no. I must have got 20</p> <p>10 or 30 calls about this.</p> <p>11 Q. Because Walmart is a -- is</p> <p>12 probably the major customer of UEP members?</p> <p>13 A. Yes. Yes.</p> <p>14 Q. And that includes --</p> <p>15 A. Well, they are the biggest in</p> <p>16 the retail industry.</p> <p>17 Q. And they're a big customer not</p> <p>18 just for UEP certified egg producers but</p> <p>19 potentially for other UEP members as well.</p> <p>20 Right?</p> <p>21 MS. LEVINE: Object to the form</p> <p>22 of the question. Calls for speculation.</p> <p>23 THE WITNESS: Walmart was very</p> <p>24 supportive of the work that UEP and</p> <p>25 FMI had done. In fact, Walmart was</p>

18 (Pages 710 to 713)

<p style="text-align: right;">714</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 the first company to commit themselves</p> <p>3 that they would only buy UEP certified</p> <p>4 eggs. And that had been their policy.</p> <p>5 They had written letters when we had</p> <p>6 discussions about this 100 percent</p> <p>7 rule. They had written letters to us</p> <p>8 warning UEP to main that 100 percent</p> <p>9 rule. Now some years have passed and</p> <p>10 a company or individual has called on</p> <p>11 Walmart, and they are supposedly</p> <p>12 marketing a EU -- I'm sorry, a USDA</p> <p>13 animal welfare program and as such</p> <p>14 presenting it as superior to the UEP</p> <p>15 certified program, and in the process</p> <p>16 of it, making false statements about</p> <p>17 the UEP certified program.</p> <p>18 BY MR. OLSON:</p> <p>19 Q. Who is this --</p> <p>20 A. By this time, at Walmart like</p> <p>21 maybe it is at many retailers, I don't know,</p> <p>22 their egg buyers don't -- they're not egg</p> <p>23 buyers for their life, they will change from</p> <p>24 one commodity procurement to another one</p> <p>25 every few years. So by this time they have</p>	<p style="text-align: right;">716</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 on Walmart and that you say was making false</p> <p>3 statements to Walmart?</p> <p>4 A. At that point, it would be --</p> <p>5 on my part it would be speculation who the</p> <p>6 individual was. I have -- you know, I have a</p> <p>7 feeling who it might be, but I don't know</p> <p>8 that, so I shouldn't say so. And -- but I</p> <p>9 know the company that was calling on Walmart.</p> <p>10 Q. What company was that?</p> <p>11 A. That was Sparboe.</p> <p>12 Q. And do you have any firsthand</p> <p>13 knowledge of what Sparboe said to Walmart</p> <p>14 about its program?</p> <p>15 A. It told Walmart that this was a</p> <p>16 USDA animal welfare program.</p> <p>17 Q. What's the basis for your</p> <p>18 knowledge about what Sparboe told Walmart?</p> <p>19 A. In the conversation with this</p> <p>20 gentleman Tony.</p> <p>21 Q. So -- and that conversation</p> <p>22 occurred before or after you drafted this</p> <p>23 letter to Walmart?</p> <p>24 A. You know, I think -- you know,</p> <p>25 I'm sorry that I don't remember, but it seems</p>
<p style="text-align: right;">715</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 new people in their egg buying that were --</p> <p>3 that I was not familiar with. So after a</p> <p>4 series of many phone calls saying, Gene, you</p> <p>5 have got to call Walmart and you've got to</p> <p>6 defend the UEP certified program because</p> <p>7 there's things being said about UEP certified</p> <p>8 that is false and you need to call them and</p> <p>9 make sure that they understand what UEP</p> <p>10 certified is. And so reluctantly finally I</p> <p>11 made a phone call and it was -- I was given a</p> <p>12 name of a particular lady to call. I made</p> <p>13 that call. And she was not available, and</p> <p>14 shortly thereafter a gentleman named Tony</p> <p>15 called me.</p> <p>16 Q. Now, my understanding was that</p> <p>17 UEP policy forbade UEP staff from contacting</p> <p>18 the customers of UEP members?</p> <p>19 A. That is not totally true</p> <p>20 because when you have your members asking you</p> <p>21 to call a retailer to clear up a</p> <p>22 misunderstanding or to confirm something,</p> <p>23 then we followed up on those member requests.</p> <p>24 Q. Who is this individual or</p> <p>25 company that you referred to that had called</p>	<p style="text-align: right;">717</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 to me like at some -- it seems to me like,</p> <p>3 and don't hold me up on this because I'm not</p> <p>4 sure about my memory on this, but it seems to</p> <p>5 me like at some time after that, that Chad</p> <p>6 was invited to go down and meet with the</p> <p>7 Walmart people. And I think what I'm doing</p> <p>8 here is trying to give him some history of</p> <p>9 what this is so that he can do so. That's my</p> <p>10 recollection, but I'm not sure I'm right.</p> <p>11 Q. At the time you called Walmart,</p> <p>12 you had no information about what Sparboe had</p> <p>13 supposedly told Walmart that was false.</p> <p>14 Right?</p> <p>15 MS. LEVINE: Objection to the</p> <p>16 form of the question.</p> <p>17 THE WITNESS: What I had been</p> <p>18 told by the phone calls, you know, is</p> <p>19 that the UEP certified program does</p> <p>20 not require a farmer to be 100</p> <p>21 percent, that it -- that a non-UEP</p> <p>22 certified company could buy UEP</p> <p>23 certified eggs and sell them to</p> <p>24 Walmart. That -- I don't know all</p> <p>25 what it was. That the Process</p>

19 (Pages 714 to 717)

<p style="text-align: right;">718</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Verified Program was a superior</p> <p>3 program, the UEP's program for</p> <p>4 whatever reasons, I don't recall all</p> <p>5 of this stuff.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. How do these people calling you</p> <p>8 know what Sparboe had told Walmart?</p> <p>9 MS. LEVINE: Objection. Calls</p> <p>10 for speculation.</p> <p>11 THE WITNESS: Again, I'm having</p> <p>12 to recall, but it happened to be, as I</p> <p>13 understand, that the people that were</p> <p>14 egg suppliers to Walmart now were</p> <p>15 being challenged to meet a new price</p> <p>16 to -- in order to maintain their</p> <p>17 business because they were --</p> <p>18 otherwise they were going to change to</p> <p>19 this program and they didn't know what</p> <p>20 program they were competing with</p> <p>21 because they couldn't find out any</p> <p>22 information about that program. And</p> <p>23 so then, you know, they began talking</p> <p>24 amongst themselves obviously about</p> <p>25 what's going on here, and so, you</p>	<p style="text-align: right;">720</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 some false statements about the UEP</p> <p>3 certified program and made some</p> <p>4 statements that maybe is inaccurate</p> <p>5 about the USDA program, and so I've</p> <p>6 been asked to call you and try to</p> <p>7 clear up any misunderstanding.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. And at the time of that</p> <p>10 conversation, you had no credible basis for</p> <p>11 making the accusation that Sparboe had made</p> <p>12 false statements about the UEP certified</p> <p>13 program, did you?</p> <p>14 MS. LEVINE: Objection to the</p> <p>15 form of the question. Calls for</p> <p>16 speculation. Asked and answered</p> <p>17 several times. Mischaracterizes what</p> <p>18 Mr. Gregory testified to.</p> <p>19 THE WITNESS: When I talked to</p> <p>20 this gentleman named Tony, I never</p> <p>21 identified the name of Sparboe or any</p> <p>22 company name. I never entered into</p> <p>23 any conversations about who they</p> <p>24 were buying with. My -- again, I</p> <p>25 state that my call was that I had</p>
<p style="text-align: right;">719</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 know, they call me saying, Gene,</p> <p>3 you've got to do something to protect</p> <p>4 the credibility of UEP's program.</p> <p>5 BY MR. OLSON:</p> <p>6 Q. But you had no credible</p> <p>7 information that Sparboe was spreading false</p> <p>8 information to Walmart, did you --</p> <p>9 MS. LEVINE: Objection.</p> <p>10 BY MR. OLSON:</p> <p>11 Q. -- before you contacted Walmart?</p> <p>12 MS. LEVINE: Objection to the</p> <p>13 form of the question. Asked and</p> <p>14 answered. Mischaracterizes what</p> <p>15 Mr. Gregory just testified to.</p> <p>16 THE WITNESS: My call to -- when</p> <p>17 I eventually received a call back from</p> <p>18 this gentleman named Tony is that I</p> <p>19 explained to him right up front is</p> <p>20 that I'm not calling you to have a</p> <p>21 discussion about who you do business</p> <p>22 or that is not the intent of this</p> <p>23 call. You can do business with</p> <p>24 anybody you want to. It is my</p> <p>25 understanding that someone has made</p>	<p style="text-align: right;">721</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 heard that someone was</p> <p>3 mischaracterizing our program.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. And what was the basis?</p> <p>6 A. And Walmart had long been a</p> <p>7 supporter and knew about all this and</p> <p>8 obviously they were new people and maybe they</p> <p>9 didn't know all the details.</p> <p>10 Q. So someone calls you on the</p> <p>11 phone and says I heard Sparboe said to</p> <p>12 Walmart things that were not true, and then</p> <p>13 you picked up the phone and called Walmart?</p> <p>14 A. I don't think -- say -- I'm</p> <p>15 sorry, say that again.</p> <p>16 Q. Some UEP member calls you on</p> <p>17 the phone and says I had heard from somewhere</p> <p>18 that Sparboe said some false information to</p> <p>19 Walmart. And that was sufficient for you to</p> <p>20 pick up the phone and tell Walmart that --</p> <p>21 and call Walmart and say you had heard that</p> <p>22 someone was spreading false information?</p> <p>23 MS. LEVINE: Objection to the</p> <p>24 form of the question. Mischaracterizes</p> <p>25 his last ten minutes of testimony.</p>

20 (Pages 718 to 721)

<p style="text-align: right;">722</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. Am I missing something? Is</p> <p>4 there something --</p> <p>5 A. You tried to say some</p> <p>6 individual called you. And I said earlier</p> <p>7 that I probably had more irate phone calls</p> <p>8 over this than anything. And I don't know</p> <p>9 how many, probably 20 or 30 calls I had about</p> <p>10 this. By this time, it's my duty to educate</p> <p>11 and make sure what -- there is a clear</p> <p>12 understanding that the UEP certified program,</p> <p>13 that it would be unfair for someone to</p> <p>14 mischaracterize it.</p> <p>15 Q. I've asked it a dozen different</p> <p>16 ways. I'm probably asking it the wrong way,</p> <p>17 but let me just try it one more time. I'm</p> <p>18 just trying to understand what was the basis</p> <p>19 for you making an assertion to anyone that</p> <p>20 you believe that Sparboe or any other company</p> <p>21 was spreading false information to Walmart.</p> <p>22 What was the basis for that?</p> <p>23 A. It was based upon phone calls</p> <p>24 that I had received from numerous producers.</p> <p>25 Q. How did those people know what</p>	<p style="text-align: right;">724</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 do I try to answer it? There are egg</p> <p>3 suppliers to Walmart.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. How do those people know what</p> <p>6 Sparboe said to Walmart, that's what I don't</p> <p>7 understand?</p> <p>8 MR. BARNES: You have to ask</p> <p>9 them.</p> <p>10 MS. LEVINE: You're going to</p> <p>11 have to take their depositions.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. So you don't know either. Is</p> <p>14 that the answer, you don't know?</p> <p>15 MS. LEVINE: Mr. Olson, this is</p> <p>16 a long time ago. This witness really</p> <p>17 has spent a half an hour trying to</p> <p>18 answer your questions fully.</p> <p>19 MR. OLSON: I'm ignoring all</p> <p>20 these improper objections, but please</p> <p>21 don't do any more of that testifying.</p> <p>22 MS. LEVINE: It's not improper.</p> <p>23 You spent 30 minutes on this line of</p> <p>24 questioning. If Mr. Gregory has</p> <p>25 anything else to add, you can ask him.</p>
<p style="text-align: right;">723</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Sparboe had said?</p> <p>3 MS. SOUTHALL: Objection to</p> <p>4 form.</p> <p>5 MS. LEVINE: Calls for</p> <p>6 speculation.</p> <p>7 MR. OLSON: What's the</p> <p>8 objection?</p> <p>9 MS. SOUTHALL: It calls for</p> <p>10 speculation. He's testified to this</p> <p>11 multiple times.</p> <p>12 MR. OLSON: It calls for</p> <p>13 speculation. Okay. Thanks.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. What was the basis to your</p> <p>16 understanding? What was your understanding</p> <p>17 of the basis of these people who called you</p> <p>18 on the phone knowing what Sparboe had said to</p> <p>19 Walmart?</p> <p>20 MS. LEVINE: Objection to the</p> <p>21 form of the question. Calls for</p> <p>22 speculation. It mischaracterizes what</p> <p>23 Mr. Gregory described what he said to</p> <p>24 Walmart.</p> <p>25 THE WITNESS: So how many times</p>	<p style="text-align: right;">725</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. Did you know the basis of these</p> <p>4 accusations that were being made in these</p> <p>5 phone calls to you?</p> <p>6 MS. LEVINE: Objection. Asked</p> <p>7 and answered.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. Did these people say I was in a</p> <p>10 room with Sparboe when they said something</p> <p>11 false?</p> <p>12 A. No.</p> <p>13 Q. So did you know the basis of</p> <p>14 them saying that Sparboe was making false</p> <p>15 statements to Walmart?</p> <p>16 MS. LEVINE: Objection. Asked</p> <p>17 and answered.</p> <p>18 THE WITNESS: You know, Steig,</p> <p>19 sometimes I just get irritated with</p> <p>20 you because you are personally</p> <p>21 attacking me. You are personally</p> <p>22 accusing me, and I don't understand</p> <p>23 why you're doing so.</p> <p>24 BY MR. OLSON:</p> <p>25 Q. Well, you're the one that</p>

21 (Pages 722 to 725)

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<p style="text-align: right;">726</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 accused Sparboe of making false statements to</p> <p>3 Walmart.</p> <p>4 A. I did not.</p> <p>5 MS. LEVINE: That is</p> <p>6 completely --</p> <p>7 THE WITNESS: I said I did not.</p> <p>8 How many times do I have to tell you</p> <p>9 that? I never ever mentioned</p> <p>10 Sparboe's name.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. So you, Mr. Gregory, don't have</p> <p>13 any basis for believing that Sparboe made</p> <p>14 false statements to Walmart. Is that right?</p> <p>15 MS. LEVINE: Objection to form</p> <p>16 of the question. Mischaracterizes the</p> <p>17 witness' last 30 minutes of testimony.</p> <p>18 THE WITNESS: You know, I have</p> <p>19 to --</p> <p>20 MS. LEVINE: You want to</p> <p>21 continue on your time and ask him, go</p> <p>22 ahead.</p> <p>23 THE WITNESS: You know, I have</p> <p>24 to trust the people that's making</p> <p>25 calls to me that are irritated about</p>	<p style="text-align: right;">728</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Yes. I'll ask the question one</p> <p>3 more time. If it's as easy as everyone on</p> <p>4 this side of the table is suggesting, if you</p> <p>5 answered it eight times, it's going to be</p> <p>6 easy for you to answer again.</p> <p>7 A. Why don't you just get to the</p> <p>8 bottom line of what your --</p> <p>9 Q. Here's the question.</p> <p>10 MS. LEVINE: He's going to ask</p> <p>11 the question again. You can answer</p> <p>12 it --</p> <p>13 BY MR. OLSON:</p> <p>14 Q. Mr. Gregory --</p> <p>15 MS. LEVINE: -- again.</p> <p>16 BY MR. OLSON:</p> <p>17 Q. Mr. Gregory, when you contacted</p> <p>18 Walmart, did you have any basis for asserting</p> <p>19 that Sparboe had made false statements to</p> <p>20 Walmart?</p> <p>21 MS. LEVINE: Objection to the</p> <p>22 form of the question. Asked and</p> <p>23 answered for the last 35 minutes. If</p> <p>24 this witness has anything else to</p> <p>25 answer, Mr. Gregory, you can add to</p>
<p style="text-align: right;">727</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 this situation. And so that's my</p> <p>3 source of the reason why I made that</p> <p>4 call. It was not about who Walmart is</p> <p>5 going to do business with. It's about</p> <p>6 making sure that it is fully</p> <p>7 understood about what the UEP</p> <p>8 certified program is.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. When you contacted Walmart, did</p> <p>11 you have any basis for believing that Sparboe</p> <p>12 had made false statements to Walmart? Yes or</p> <p>13 no?</p> <p>14 MS. LEVINE: Mr. Olson, you</p> <p>15 really have asked this for 35 minutes.</p> <p>16 This is a fact deposition to find out</p> <p>17 what the witness knows. This is not a</p> <p>18 time to interrogate him. You'll have</p> <p>19 trial. Really. He's answered that</p> <p>20 question about eight times if you look</p> <p>21 at your record.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. It's a yes or no question.</p> <p>24 A. You're looking at me like you</p> <p>25 want an answer.</p>	<p style="text-align: right;">729</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 the record.</p> <p>3 THE WITNESS: I will again say,</p> <p>4 based upon numerous phone calls from</p> <p>5 our members telling me that what</p> <p>6 Sparboe was telling Walmart was a</p> <p>7 misrepresentation of the UEP certified</p> <p>8 program.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. And did you know the basis for</p> <p>11 these people in the phone call saying what</p> <p>12 Sparboe had told Walmart?</p> <p>13 MS. LEVINE: Objection to the</p> <p>14 form. Asked and answered. I think</p> <p>15 the record is very clear on everything</p> <p>16 Mr. Gregory has said. If you want to</p> <p>17 say something in addition, you</p> <p>18 certainly can, sir.</p> <p>19 THE WITNESS: I don't know how</p> <p>20 to answer your question. I tried</p> <p>21 every way in the world, but I don't</p> <p>22 know how to answer it. I'm not trying</p> <p>23 to be evasive. I'm just trying to</p> <p>24 tell you where the phone calls came</p> <p>25 for me and my instructions to make</p>

22 (Pages 726 to 729)

<p style="text-align: right;">730</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 phone call -- a phone call to Walmart.</p> <p>3 BY MR. OLSON:</p> <p>4 Q. Were these people in the room</p> <p>5 with Walmart, had they seen something written</p> <p>6 by Sparboe that was false?</p> <p>7 MS. LEVINE: Objection.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. How did these people know what</p> <p>10 Sparboe was saying to Walmart?</p> <p>11 MS. LEVINE: Objection. Calls</p> <p>12 for speculation. Asked and answered.</p> <p>13 If you can answer any additional</p> <p>14 information to Mr. Olson, you may.</p> <p>15 Otherwise, you can stand on your</p> <p>16 answer.</p> <p>17 THE WITNESS: These people are</p> <p>18 suppliers to Walmart. I am assuming</p> <p>19 that Walmart has now called their</p> <p>20 suppliers and said that you're going</p> <p>21 to have to lower your price if you</p> <p>22 want to keep my business because</p> <p>23 otherwise I'm going to change to this</p> <p>24 program. That's what I recall.</p> <p>25 BY MR. OLSON:</p>	<p style="text-align: right;">732</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 question is, this is our program, it looks</p> <p>3 like somebody has taken things from us and</p> <p>4 not -- without having asked our permission to</p> <p>5 do so.</p> <p>6 Q. And there was some questions</p> <p>7 you drafted to be asked Walmart. Right?</p> <p>8 A. Yes.</p> <p>9 Q. And one of them is, "Why would</p> <p>10 Wal-Mart accept a secret program that is not</p> <p>11 supported by an industry?"</p> <p>12 A. The reason being is that it</p> <p>13 would be nice if the egg suppliers that are</p> <p>14 current suppliers to Walmart had a way of</p> <p>15 knowing what they're competing against and in</p> <p>16 trying to find things and trying to go</p> <p>17 through USDA to find out what this program</p> <p>18 that supposedly was touted and reported as a</p> <p>19 USDA program, in our Freedom of Information</p> <p>20 Act we tried to find out what that was, and</p> <p>21 so much of it was redacted that we could not</p> <p>22 learn very much about it other than those</p> <p>23 things that they had taken out of UEP's</p> <p>24 program.</p> <p>25 Q. You can put that aside.</p>
<p style="text-align: right;">731</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. All right. So you draft this</p> <p>3 as something for Mr. Gregory to use</p> <p>4 potentially when he has discussions with</p> <p>5 Walmart, Chad Gregory that is?</p> <p>6 A. I'm trying to tell him some</p> <p>7 background of what's going on here.</p> <p>8 Q. So if you look at the page that</p> <p>9 ends in 81 of what you drafted, there's a</p> <p>10 question for example, "Is it possible that</p> <p>11 the copyrighted UEP animal husbandry</p> <p>12 guidelines have been stolen?"</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. So you were comfortable</p> <p>16 suggesting that someone was out there</p> <p>17 stealing the UEP guidelines?</p> <p>18 A. When I saw the copy of this, I</p> <p>19 can't remember the exact name of the program</p> <p>20 that was being used as a competition, and you</p> <p>21 look at it, there is an awful lot of key</p> <p>22 information in that program that is exactly</p> <p>23 what's in UEP's program. And they have</p> <p>24 selected things out of the UEP certified</p> <p>25 program to include in their program. So my</p>	<p style="text-align: right;">733</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 (Exhibit Gregory-85, 9/24/08</p> <p>4 E-mail, Bates NUCAL-08md2002-0056239 &</p> <p>5 NUCAL-08md2002-0056240, was marked for</p> <p>6 identification.)</p> <p>7 - - -</p> <p>8 BY MR. OLSON:</p> <p>9 Q. Let me hand you what's been</p> <p>10 marked Gregory-85. This is a two-page</p> <p>11 document Bates stamped NUCAL-08md2002-0056239</p> <p>12 through 40.</p> <p>13 I'll ask if you can identify it</p> <p>14 as an e-mail that you wrote on September 24,</p> <p>15 2008?</p> <p>16 A. I've read it.</p> <p>17 Q. This is an e-mail that you</p> <p>18 wrote. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. It concerns a Wall Street</p> <p>21 Journal article?</p> <p>22 A. Yes.</p> <p>23 Q. A reporter named John Wilke?</p> <p>24 A. Yes.</p> <p>25 Q. At the end of your e-mail</p>

23 (Pages 730 to 733)

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<p style="text-align: right;">734</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 towards the end, you -- at the bottom of the</p> <p>3 first page you say, "Mr. Wilke...", in the</p> <p>4 article, "...says a number of times that he</p> <p>5 got information from UEP newsletters and</p> <p>6 letters to members."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. You say, "Why any member would</p> <p>10 share private information with a reporter is</p> <p>11 beyond my understanding."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And you're referring to those</p> <p>15 newsletters and those letters. Right?</p> <p>16 A. Yes, although I do not believe</p> <p>17 that's where he got the information.</p> <p>18 Q. All right. So you --</p> <p>19 A. You brought this subject up.</p> <p>20 Q. I'm at the end of -- I'm at the</p> <p>21 end of my time.</p> <p>22 A. You brought the subject up.</p> <p>23 Q. Well, I'm at the end of my</p> <p>24 time, so --</p> <p>25 A. I'd like to tell the setup deal</p>	<p style="text-align: right;">736</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 record.</p> <p>3 MS. LEVINE: I just want to say</p> <p>4 we're back on the record and that the</p> <p>5 time for this deposition is 14 hours</p> <p>6 for all of the MDL plaintiffs and then</p> <p>7 the defendants have an opportunity,</p> <p>8 but if you want to reserve anything</p> <p>9 for redirect, please work that into</p> <p>10 your 14 hours.</p> <p>11 MS. CAIN-MANNIX: We'll talk</p> <p>12 about that later. How much time is</p> <p>13 left?</p> <p>14 MR. OLSON: We've gone 11:39.</p> <p>15 - - -</p> <p>16 EXAMINATION</p> <p>17 - - -</p> <p>18 BY MS. CAIN-MANNIX:</p> <p>19 Q. Good morning, Mr. Gregory.</p> <p>20 A. Good morning.</p> <p>21 Q. My name is Moira Cain-Mannix.</p> <p>22 I have a few questions for you.</p> <p>23 In approximately December of</p> <p>24 2003, did UEP implement a licensing program?</p> <p>25 A. We implemented a licensing</p>
<p style="text-align: right;">735</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 here if I could.</p> <p>3 MS. LEVINE: We can ask you that</p> <p>4 question.</p> <p>5 MR. OLSON: At this point, I'm</p> <p>6 going to thank you for your time. I'm</p> <p>7 going to pass the witness. Obviously</p> <p>8 I reserve the right to do any follow</p> <p>9 up after examination is conducted on</p> <p>10 this side of the table. And we do</p> <p>11 anticipate that that will happen. So</p> <p>12 let's take a break.</p> <p>13 THE WITNESS: But Mr. --</p> <p>14 MS. LEVINE: We'll have to see</p> <p>15 about timing on your 14 hours.</p> <p>16 VIDEOGRAPHER: The time is</p> <p>17 approximately 9:32 a.m. This ends</p> <p>18 tape one, volume three. We're now off</p> <p>19 the record.</p> <p>20 - - -</p> <p>21 (A recess was taken.)</p> <p>22 - - -</p> <p>23 VIDEOGRAPHER: The time is</p> <p>24 9:44 a.m. This begins tape two,</p> <p>25 volume three. We're back on the</p>	<p style="text-align: right;">737</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 program, but I would need some document to</p> <p>3 verify the date.</p> <p>4 Q. I'll show you what we will mark</p> <p>5 as Exhibit 86 to your deposition.</p> <p>6 A. Okay.</p> <p>7 - - -</p> <p>8 (Exhibit Gregory-86, 12/30/03</p> <p>9 United Voices, Bates MOARK0006744 -</p> <p>10 MOARK0006756, was marked for</p> <p>11 identification.)</p> <p>12 - - -</p> <p>13 BY MS. CAIN-MANNIX:</p> <p>14 Q. Could you identify this</p> <p>15 document for the record?</p> <p>16 A. Yes.</p> <p>17 MS. SUMNER: Read the Bates</p> <p>18 number into the record for the people</p> <p>19 on the phone.</p> <p>20 MS. CAIN-MANNIX: Sure. It's</p> <p>21 MOARK -- I have an incomplete copy.</p> <p>22 MOARK0006744 through 6756.</p> <p>23 BY MS. CAIN-MANNIX:</p> <p>24 Q. My questions really are only</p> <p>25 focusing on the first two pages.</p>

24 (Pages 734 to 737)

<p style="text-align: right;">738</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Okay.</p> <p>3 Q. Is this a document you created?</p> <p>4 A. Yes.</p> <p>5 Q. In December of 2003?</p> <p>6 A. Yes.</p> <p>7 Q. I'd like to focus your</p> <p>8 attention at the bottom of page 1 and it</p> <p>9 carries over onto the second page.</p> <p>10 A. Okay.</p> <p>11 Q. "UEP's board has approved the</p> <p>12 marketing of Animal Care Certified eggs by</p> <p>13 non-certified producers and/or marketers</p> <p>14 providing they sign a License and Marketing</p> <p>15 Agreement, pay an annual license fee and file</p> <p>16 Monthly Compliance Reports. The reporting</p> <p>17 forms and agreements will be provided to all</p> <p>18 interested marketers soon after January 1,</p> <p>19 2004."</p> <p>20 Does this refresh your</p> <p>21 recollection about the licensing program?</p> <p>22 A. Yes. Yes.</p> <p>23 Q. This program at this time was</p> <p>24 available to producers and/or marketers,</p> <p>25 non-certified producers and/or marketers?</p>	<p style="text-align: right;">740</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Mr. Gregory?</p> <p>3 A. Yes.</p> <p>4 Q. And what is it?</p> <p>5 A. It's a letter to Chuck Elste of</p> <p>6 Nu-Cal Foods.</p> <p>7 Q. Dated April 15 of 2004?</p> <p>8 A. Yes.</p> <p>9 Q. It's regarding the licensing</p> <p>10 program. Correct?</p> <p>11 A. Yes.</p> <p>12 Q. It's asking Nu-Cal Foods if it</p> <p>13 wants to become a member or licensed</p> <p>14 marketer. Correct?</p> <p>15 A. Yes.</p> <p>16 Q. You tell them what they need to</p> <p>17 do to become a licensed marketer. Is that</p> <p>18 correct?</p> <p>19 A. I think that's what the letter</p> <p>20 is saying, yes.</p> <p>21 Q. And the four things they need</p> <p>22 to do are sign and return the enclosed</p> <p>23 license agreement?</p> <p>24 A. Yes.</p> <p>25 Q. Pay an annual fee, sign and</p>
<p style="text-align: right;">739</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. From that point forward, yes.</p> <p>3 Q. Did you have to be a member of</p> <p>4 UEP or UEA to obtain a license?</p> <p>5 A. No.</p> <p>6 Q. Did you send the reporting</p> <p>7 forms and agreements soon after January 1,</p> <p>8 2004?</p> <p>9 A. I don't recall, but this says</p> <p>10 that I will be doing so or we will be doing</p> <p>11 so.</p> <p>12 Q. I'll show you what we'll mark</p> <p>13 as Exhibit 87 to your deposition.</p> <p>14 A. Are you done with this?</p> <p>15 Q. Yes, you can put that away.</p> <p>16 Thanks.</p> <p>17 - - -</p> <p>18 (Exhibit Gregory-87, 4/15/04</p> <p>19 Letter, Bates NUCAL-08md2002-0001653,</p> <p>20 was marked for identification.)</p> <p>21 - - -</p> <p>22 BY MS. CAIN-MANNIX:</p> <p>23 Q. This is NUCAL-08md2002-0001653.</p> <p>24 A. Yes.</p> <p>25 Q. Can you identify this document,</p>	<p style="text-align: right;">741</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 return the enclosed marketing agreement?</p> <p>3 A. Yes.</p> <p>4 Q. And sign and return the</p> <p>5 enclosed dispute resolution?</p> <p>6 A. Yes.</p> <p>7 Q. And those documents are</p> <p>8 enclosed behind your letter. Is that</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. There's also a copy of the</p> <p>12 check from Nu-Cal Foods which seems to</p> <p>13 indicate that they paid some kind of a</p> <p>14 licensing fee?</p> <p>15 A. Yes.</p> <p>16 Q. You can put that document</p> <p>17 aside.</p> <p>18 I'm going to show you what</p> <p>19 we'll mark as Exhibit 88 to your deposition.</p> <p>20 - - -</p> <p>21 (Exhibit Gregory-88, 6/1/04</p> <p>22 Letter, Bates NUCAL-08md2002-0001440,</p> <p>23 was marked for identification.)</p> <p>24 - - -</p> <p>25 BY MS. CAIN-MANNIX:</p>

25 (Pages 738 to 741)

<p style="text-align: right;">742</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. For the record, this is</p> <p>3 NUCAL-08md2002-0001440. Can you identify</p> <p>4 this document?</p> <p>5 A. Yes.</p> <p>6 Q. And this is a letter from you</p> <p>7 dated June 1, 2004, again, to Mr. Chuck</p> <p>8 Elste?</p> <p>9 A. Yes.</p> <p>10 Q. And it's a follow up to your</p> <p>11 last letter. And they're sending in the</p> <p>12 licensing agreement and other documents. Is</p> <p>13 that correct?</p> <p>14 A. Yes.</p> <p>15 Q. At this point, now that they</p> <p>16 are licensed marketers, you sent them a</p> <p>17 number of enclosures?</p> <p>18 A. Yes.</p> <p>19 Q. "A copy of your signed license</p> <p>20 agreement," "Monthly reporting forms," "The</p> <p>21 audit guidelines as written by USDA," "The</p> <p>22 audit score sheet to be used by USDA," "The</p> <p>23 list of USDA auditors," "Letter from</p> <p>24 USDA-FSIS and USDA-AMS regarding the use of</p> <p>25 the Animal Care Certified logo," and a</p>	<p style="text-align: right;">744</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 cooperative of egg farmers. And their</p> <p>3 individual egg farmers have -- are now</p> <p>4 UEP certified companies and they can</p> <p>5 sell their eggs as UEP certified eggs.</p> <p>6 I think, I'm trying to remember now, I</p> <p>7 think Chuck Elste requested to have a</p> <p>8 license agreement because they are</p> <p>9 doing business with customers that</p> <p>10 recognize the name Nu-Cal Foods. They</p> <p>11 don't recognize the name of JS West or</p> <p>12 Sunrise Farms, so forth. So what he's</p> <p>13 wanting to do is to have a way by</p> <p>14 which he can communicate to his</p> <p>15 customers that Nu-Cal has a license to</p> <p>16 market these eggs. I think that's --</p> <p>17 this is a little bit different than</p> <p>18 what a normal non-certified licensor</p> <p>19 would be.</p> <p>20 BY MS. CAIN-MANNIX:</p> <p>21 Q. But would the process be</p> <p>22 similar in terms of the types of documents</p> <p>23 you sent them --</p> <p>24 A. Yes.</p> <p>25 Q. -- both to join and then after</p>
<p style="text-align: right;">743</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 "Statement on the required use of the Animal</p> <p>3 Care Certified Website address"?</p> <p>4 A. Yes.</p> <p>5 Q. And you asked them to complete</p> <p>6 monthly reporting forms and return them on a</p> <p>7 timely basis to Howard Magwire?</p> <p>8 A. Yes.</p> <p>9 Q. And he was a UEP consultant at</p> <p>10 that time or an employee?</p> <p>11 A. Yes. And I don't know -- there</p> <p>12 was a period of time that, yes, he did work</p> <p>13 for us as a consultant and then we hired him</p> <p>14 as our director of government relations</p> <p>15 program, but I don't know what the timing of</p> <p>16 it is.</p> <p>17 Q. And are Exhibits 87 and 88</p> <p>18 typical of how you would handle the license</p> <p>19 agreement with other members as well, or</p> <p>20 licensors I should say?</p> <p>21 MS. LEVINE: Objection to the</p> <p>22 form of the question.</p> <p>23 THE WITNESS: Nu-Cal is a little</p> <p>24 bit different than typical. And the</p> <p>25 reason being is that Nu-Cal is a</p>	<p style="text-align: right;">745</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 they joined?</p> <p>3 A. Yes. Yes.</p> <p>4 Q. You can put those documents</p> <p>5 aside.</p> <p>6 Mr. Gregory, did there come a</p> <p>7 time when there was some controversy about</p> <p>8 producers being part of the license program?</p> <p>9 A. Yes, there was.</p> <p>10 Q. And did it result in producers</p> <p>11 no longer being capable of obtaining a</p> <p>12 license?</p> <p>13 A. Yes, it did.</p> <p>14 Q. For at least a period of time?</p> <p>15 A. No. It changed to a point that</p> <p>16 from that point forward, if you were an egg</p> <p>17 producer, you had to -- on your production,</p> <p>18 you had to implement the UEP certified</p> <p>19 program, and that by doing so, you could</p> <p>20 market eggs as UEP certified. If you were a</p> <p>21 producer, that was the only way you could</p> <p>22 market UEP certified. So there was the need</p> <p>23 because that left people out of the market,</p> <p>24 people that did not own chickens but were in</p> <p>25 the marketing of eggs, they needed a means by</p>

26 (Pages 742 to 745)

<p style="text-align: right;">746</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 which they could buy UEP certified eggs to</p> <p>3 fill their customer's order. So it changed</p> <p>4 at a point in time and it's remained that way</p> <p>5 ever since.</p> <p>6 Q. I'm going to show you what</p> <p>7 we'll mark as Exhibit 89 to your deposition.</p> <p>8 - - -</p> <p>9 (Exhibit Gregory-89, Packet of</p> <p>10 documents, Bates MOARK0020062 -</p> <p>11 MOARK0020096, was marked for</p> <p>12 identification.)</p> <p>13 - - -</p> <p>14 BY MS. CAIN-MANNIX:</p> <p>15 Q. We're really only focusing,</p> <p>16 it's a large packet, but on a couple of</p> <p>17 pages. It's Bates labeled MOARK0020062</p> <p>18 through MOARK0020096.</p> <p>19 I'm going to focus on pages</p> <p>20 20078 to 20080. Do you have that?</p> <p>21 A. Do you want me to scan these</p> <p>22 now?</p> <p>23 Q. Sure.</p> <p>24 A. (Reviewing document.)</p> <p>25 Okay. I just quickly dotted.</p>	<p style="text-align: right;">748</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 These are -- just to be clear, these</p> <p>3 motions are taken from other</p> <p>4 documents. They're not -- just to be</p> <p>5 clear about the document you're using.</p> <p>6 BY MS. CAIN-MANNIX:</p> <p>7 Q. And the motion carried, this</p> <p>8 motion number 2, with a vote of 19 yes and 8</p> <p>9 nos. Correct?</p> <p>10 MS. LEVINE: Object to the form</p> <p>11 of the question. Lacks foundation as</p> <p>12 to this document so the witness is</p> <p>13 clear about what he's testifying to.</p> <p>14 THE WITNESS: That's what</p> <p>15 this -- that's what this so states.</p> <p>16 BY MS. CAIN-MANNIX:</p> <p>17 Q. And this motion essentially</p> <p>18 says we're discontinuing the licensing</p> <p>19 program for producers at this time. Is that</p> <p>20 correct?</p> <p>21 MS. LEVINE: Object to the form</p> <p>22 of the question as to the motion</p> <p>23 regarding this date and this document.</p> <p>24 You certainly can answer the question.</p> <p>25 THE WITNESS: Yes, at this point</p>
<p style="text-align: right;">747</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Can you identify this document?</p> <p>3 A. I do.</p> <p>4 Q. Was this a meeting that you</p> <p>5 attended?</p> <p>6 A. It appears that I did. It</p> <p>7 doesn't have my name on it, but it appears</p> <p>8 that I did.</p> <p>9 Q. Were you the author of these</p> <p>10 notes or minutes, if you will?</p> <p>11 A. I would have to assume that I</p> <p>12 am. I can't verify for sure.</p> <p>13 Q. On the first page, do you</p> <p>14 recall motion, the motions identified as</p> <p>15 number 2 and number 3?</p> <p>16 A. Yes, I do.</p> <p>17 Q. And motion number 2 pertains to</p> <p>18 producers. Is that correct?</p> <p>19 MS. ZIEMIANEK: Counsel, which</p> <p>20 page are we on?</p> <p>21 MS. CAIN-MANNIX: 20078.</p> <p>22 THE WITNESS: Yes. That is</p> <p>23 addressed towards producers.</p> <p>24 MS. LEVINE: Object to the form</p> <p>25 of the question. Lack of foundation.</p>	<p style="text-align: right;">749</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 it is that if you are an egg producer,</p> <p>3 your opportunity to market UEP</p> <p>4 certified eggs is to -- for your</p> <p>5 company to implement the program.</p> <p>6 BY MS. CAIN-MANNIX:</p> <p>7 Q. So when you say "implement the</p> <p>8 program," you mean become a member, not a</p> <p>9 member -- strike that.</p> <p>10 You become a certified producer</p> <p>11 under the UEP certified program?</p> <p>12 A. Yes.</p> <p>13 Q. You could no longer obtain a</p> <p>14 license?</p> <p>15 A. If you were an egg producer,</p> <p>16 you could no longer obtain a license. Do</p> <p>17 you -- we gave you the opportunity to enroll</p> <p>18 in a program and sell eggs that way just like</p> <p>19 all other producers were. So it was trying</p> <p>20 to create an equal level playing field for</p> <p>21 everybody.</p> <p>22 Q. At that time, who had licenses,</p> <p>23 do you recall, that were producers?</p> <p>24 A. You know, I'm sorry, but this</p> <p>25 is 2005. I don't recall.</p>

27 (Pages 746 to 749)

<p style="text-align: right;">750</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you recall if Sparboe was a</p> <p>3 licensee at that time?</p> <p>4 A. I do not.</p> <p>5 Q. Motion number 3 is a motion</p> <p>6 directed to shell egg processors and further</p> <p>7 egg processors who do not own or operate egg</p> <p>8 production facilities. Correct?</p> <p>9 MS. LEVINE: Object to the form</p> <p>10 of the question regarding this</p> <p>11 document.</p> <p>12 THE WITNESS: That is what it so</p> <p>13 states.</p> <p>14 BY MS. CAIN-MANNIX:</p> <p>15 Q. And the motion passed. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. And the purpose of the motion</p> <p>18 is to allow shell egg processors and further</p> <p>19 egg processors to continue to obtain licenses</p> <p>20 to market ACC eggs?</p> <p>21 MS. LEVINE: Object to the form</p> <p>22 of the question.</p> <p>23 BY MS. CAIN-MANNIX:</p> <p>24 Q. So long as they don't own or</p> <p>25 operate egg production facilities?</p>	<p style="text-align: right;">752</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. But not all --</p> <p>3 A. -- if you're a producer.</p> <p>4 Q. Producers could no longer get</p> <p>5 licenses, though?</p> <p>6 A. You can no longer get a</p> <p>7 license.</p> <p>8 Q. Reason number 2 states it's a</p> <p>9 "Reaction to an eastern producer who is</p> <p>10 'cheating.'" Do you know who that was?</p> <p>11 A. It was reported to me that</p> <p>12 there, too, was a northeastern producer or</p> <p>13 eastern producer that had violated the</p> <p>14 program. And I've used the word here</p> <p>15 "cheating," and that he had misrepresented</p> <p>16 the product.</p> <p>17 Q. Do you recall who that was?</p> <p>18 A. Do I have to do -- do I have to</p> <p>19 name? Kreider Farms.</p> <p>20 Q. Reason number 3 states that one</p> <p>21 of the reasons for the motion is a "Reaction</p> <p>22 to the market place where in a non-certified</p> <p>23 marketer can offer a discount on shell eggs</p> <p>24 which are not ACC vs. ACC. This is a</p> <p>25 competitive advantage since they may have</p>
<p style="text-align: right;">751</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes. And the reason why that</p> <p>3 was is that we did not want to restrict this</p> <p>4 program to only egg producers. There is</p> <p>5 other people that market eggs. So we wanted</p> <p>6 to provide an opportunity for those people</p> <p>7 that did not own egg production to be able to</p> <p>8 fill their customers' needs by providing a</p> <p>9 license agreement that had certain</p> <p>10 stipulations to it.</p> <p>11 Q. Let's look at the reasons for</p> <p>12 the motions.</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall one of the</p> <p>15 reasons for the motion was an effort to gain</p> <p>16 100 percent participation?</p> <p>17 A. Yes. That's always been our</p> <p>18 goal. We'd like for everybody to be on the</p> <p>19 program.</p> <p>20 Q. But in some sense, motion</p> <p>21 number 2 eliminates one opportunity for</p> <p>22 participation?</p> <p>23 A. No. In fact, motion number 2</p> <p>24 creates an equal situation where everybody</p> <p>25 can participate in the program --</p>	<p style="text-align: right;">753</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 lower costs on their own production."</p> <p>3 A. What is trying to be said</p> <p>4 there, if you are an egg producer and you</p> <p>5 have ten houses of chickens, and if you have</p> <p>6 only implemented our guidelines on two of</p> <p>7 those houses, let's say, when you take the</p> <p>8 total farm cost of production because it does</p> <p>9 cost more to produce Animal Care Certified</p> <p>10 eggs at this point, it does cost more to</p> <p>11 produce Animal Care Certified eggs, so when</p> <p>12 you are only licensed to market eggs out of</p> <p>13 let's say a couple houses and you spread that</p> <p>14 cost over your entire farm or company, then</p> <p>15 you have a lower cost than the company that</p> <p>16 has made a commitment to do it on 100 percent</p> <p>17 all their farms.</p> <p>18 Q. Does it also mean that a</p> <p>19 licensed producer could offer to a customer</p> <p>20 UEP certified eggs or a lower cost non-UEP</p> <p>21 certified egg?</p> <p>22 A. That has always been the case,</p> <p>23 that if you are a UEP certified producer, you</p> <p>24 have the opportunity to buy non-certified</p> <p>25 eggs if that's what your customer would</p>

28 (Pages 750 to 753)

<p style="text-align: right;">754</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 prefer to buy and pay for. So that's always</p> <p>3 been the opportunity to do that. If your</p> <p>4 customer wants that, you want to do so.</p> <p>5 Q. At that time, were some members</p> <p>6 upset by producers who were licensors but not</p> <p>7 subject to the full UEP certified program,</p> <p>8 that they could produce eggs on some houses</p> <p>9 that weren't subject to UEP guidelines at a</p> <p>10 lower cost of production and sell them to</p> <p>11 customers at a lower cost, or they had the</p> <p>12 option of selling some licensed eggs at a</p> <p>13 higher cost to customers and it created a</p> <p>14 competitive disadvantage?</p> <p>15 MS. LEVINE: Objection to the</p> <p>16 form of the question. Compound.</p> <p>17 THE WITNESS: I'm not trying to</p> <p>18 be evasive, I'm just --</p> <p>19 BY MS. CAIN-MANNIX:</p> <p>20 Q. It's a long question.</p> <p>21 A. It's been -- I don't know</p> <p>22 how -- at this point I'm not clear on the</p> <p>23 question and how to answer it.</p> <p>24 Q. UEP certified producers that</p> <p>25 were part of the certified program --</p>	<p style="text-align: right;">756</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Certified eggs.</p> <p>3 Q. But it says that was unanswered</p> <p>4 by the motion.</p> <p>5 A. The motion doesn't necessarily</p> <p>6 say that, but that was -- there's no motion</p> <p>7 that clearly says limit free trade, but</p> <p>8 that's the point of this, is establishing a</p> <p>9 license agreement for people that are simply</p> <p>10 in the process and our egg products business</p> <p>11 that don't own layers is that if we were to</p> <p>12 continue to leave them out of the</p> <p>13 opportunity, that would limit free trade.</p> <p>14 Q. But they already had that</p> <p>15 opportunity prior to the motion. Right?</p> <p>16 A. No, they did not. We're</p> <p>17 talking about at this point in time egg</p> <p>18 producers had a license, there was -- this is</p> <p>19 when we are now approving a license agreement</p> <p>20 for people that don't own chickens.</p> <p>21 Q. I want to go back to the first</p> <p>22 exhibit I showed you.</p> <p>23 MS. LEVINE: What number is</p> <p>24 that?</p> <p>25 MS. CAIN-MANNIX: I think it is</p>
<p style="text-align: right;">755</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. -- had to implement guidelines</p> <p>4 on 100 percent of their houses?</p> <p>5 A. At that point in time that was</p> <p>6 changed, yes.</p> <p>7 Q. And the licensors didn't have</p> <p>8 to do that?</p> <p>9 A. That's what was occurring, yes.</p> <p>10 Q. And so it was a competitive</p> <p>11 disadvantage due to lower cost of production?</p> <p>12 MS. LEVINE: Objection to the</p> <p>13 form of the question.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MS. CAIN-MANNIX:</p> <p>16 Q. Moving down to "Problems</p> <p>17 created/unanswered by motions." Number 1, it</p> <p>18 says it "Limits free trade of eggs." Do you</p> <p>19 recall that discussion?</p> <p>20 A. No, I do not recall the</p> <p>21 discussion, but I think that it's what we</p> <p>22 were -- what this is referring to is that we</p> <p>23 needed to find a vehicle licensed somehow or</p> <p>24 another so that we did not leave anybody out</p> <p>25 of the opportunity to sell Animal Care</p>	<p style="text-align: right;">757</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 86.</p> <p>3 BY MS. CAIN-MANNIX:</p> <p>4 Q. It states that there was an</p> <p>5 approval -- "UEP Board has approved the</p> <p>6 marketing of Animal Care Certified eggs by</p> <p>7 non-certified producers and/or marketers</p> <p>8 provided they sign a License and Marketing</p> <p>9 Agreement..."</p> <p>10 A. So what's your point I'm asking?</p> <p>11 Q. So it was open to marketers</p> <p>12 back then that were producers?</p> <p>13 A. That was as of January 2004,</p> <p>14 and now we're looking at a meeting of May of</p> <p>15 2005, so...</p> <p>16 Q. Right. So marketers didn't</p> <p>17 change. Right?</p> <p>18 A. Let me go back and look at</p> <p>19 that.</p> <p>20 I'm not trying to be evasive,</p> <p>21 I'm struggling with the time because so many</p> <p>22 things happened and as changes were going on</p> <p>23 and I -- my point here is that we were trying</p> <p>24 to make sure that everybody that marketed</p> <p>25 eggs had an opportunity to do that, and --</p>

29 (Pages 754 to 757)

<p style="text-align: right;">758</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 what page were we on? I forget, was it 78?</p> <p>3 And what I think I'm trying to say at that</p> <p>4 point in time, that had we not done that,</p> <p>5 that it would have left some people out of</p> <p>6 the market.</p> <p>7 Q. But licensors back in '4 -- I'm</p> <p>8 sorry, strike that.</p> <p>9 Marketers could do it in 2004</p> <p>10 and they could still do it in 2005. What</p> <p>11 changed in 2005 was producers could not get</p> <p>12 licenses anymore.</p> <p>13 A. No. See, I'm not sure, you</p> <p>14 see -- you know, my memory is foggy on this,</p> <p>15 but I'm not sure what we're talking about in</p> <p>16 a meeting April 19, 2005, all I'm -- what I</p> <p>17 think I'm reporting on is what those motions</p> <p>18 were at some point preceding that. This was</p> <p>19 not necessarily a meeting at that point in</p> <p>20 time of the Animal Welfare Committee or the</p> <p>21 board is reporting what those motions were at</p> <p>22 a previous time.</p> <p>23 Q. And what time was that, to your</p> <p>24 recollection?</p> <p>25 A. Come on. Come on. My memory</p>	<p style="text-align: right;">760</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 reporting that our actions had raised</p> <p>3 these questions. I'm not saying that</p> <p>4 I'm raising this question.</p> <p>5 BY MS. CAIN-MANNIX:</p> <p>6 Q. Fair enough. The final page</p> <p>7 references another motion. Do you recall</p> <p>8 when this motion was made?</p> <p>9 A. I do not.</p> <p>10 Q. Was it made at this particular</p> <p>11 meeting?</p> <p>12 A. I do not know.</p> <p>13 Q. And this final motion was</p> <p>14 defeated. Correct?</p> <p>15 A. Yes. That so states.</p> <p>16 Q. And this final motion would</p> <p>17 have included non-certified producers and</p> <p>18 marketers. Correct?</p> <p>19 A. Quite honestly, I don't</p> <p>20 understand this because I don't know when</p> <p>21 this motion had been made. But I do -- what</p> <p>22 I'm saying to you is that at some point in</p> <p>23 time, licenses were given to people that were</p> <p>24 not egg producers to allow them to market</p> <p>25 certified eggs. So I don't know when that</p>
<p style="text-align: right;">759</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 is not that good. You know, I don't know</p> <p>3 what the date of that was.</p> <p>4 Q. Was it a year old motion?</p> <p>5 A. I do not know that.</p> <p>6 Q. Moving on to page 79, the</p> <p>7 continued list of problems created/unanswered</p> <p>8 by motion. Number 4, one of the reasons was</p> <p>9 it "Raises the question about the original</p> <p>10 purpose of ACC: a husbandry practice program</p> <p>11 now managing the marketing and economic</p> <p>12 restriction of movement of product." You</p> <p>13 wrote that. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. There's a final --</p> <p>16 A. You're implying that that is --</p> <p>17 Q. I'm not implying anything. I'm</p> <p>18 just trying to get the facts that you wrote</p> <p>19 this at the time of this document.</p> <p>20 MS. LEVINE: Objection to form</p> <p>21 of the question. I think he said he</p> <p>22 doesn't recall who wrote it, he thinks</p> <p>23 he does.</p> <p>24 THE WITNESS: But what I'm</p> <p>25 writing here is that this is -- I'm</p>	<p style="text-align: right;">761</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 motion is made and I don't know why it was</p> <p>3 defeated.</p> <p>4 Q. Turn to page 76 of this packet.</p> <p>5 MR. BARNES: Which package are</p> <p>6 we on, Counsel?</p> <p>7 MS. CAIN-MANNIX: Same one,</p> <p>8 four pages previous to this.</p> <p>9 THE WITNESS: So now this is</p> <p>10 minutes from an April 19, 2005,</p> <p>11 meeting of the Producer Committee for</p> <p>12 Animal Welfare. You're asking me</p> <p>13 about page 76?</p> <p>14 BY MS. CAIN-MANNIX:</p> <p>15 Q. Correct, the motion identified</p> <p>16 in the middle of that page.</p> <p>17 A. Yes.</p> <p>18 Q. Would that motion have included</p> <p>19 any type of marketer, whether that marketer</p> <p>20 be a producer marketer or just a processor</p> <p>21 marketer that doesn't produce?</p> <p>22 MS. LEVINE: Object to the form</p> <p>23 of the question. Lacks foundation.</p> <p>24 Unclear as to the identity of the</p> <p>25 entity counsel is referring to.</p>

30 (Pages 758 to 761)

<p style="text-align: right;">762</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: I think this</p> <p>3 motion is talking about those people</p> <p>4 that don't own egg laying hens and</p> <p>5 we're talking about expanding this to</p> <p>6 people that are egg marketers but</p> <p>7 don't qualify -- that don't own egg</p> <p>8 laying hens. I think that's what</p> <p>9 we're talking about here. You know,</p> <p>10 I --</p> <p>11 BY MS. CAIN-MANNIX:</p> <p>12 Q. Why is that different from</p> <p>13 motion number 3 that we looked at previously</p> <p>14 on page 78?</p> <p>15 A. It is different.</p> <p>16 Q. I'm asking if it was different</p> <p>17 because one carried and one did not?</p> <p>18 A. So I'm going to compare that to</p> <p>19 which one you said?</p> <p>20 Q. On page 78, motion number 3.</p> <p>21 A. It did carry. And I don't</p> <p>22 know -- but, again, is that part of this</p> <p>23 April 5th -- was that a motion from</p> <p>24 April 5th? I don't see it. I don't know.</p> <p>25 Q. Well, regardless of the date,</p>	<p style="text-align: right;">764</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Correct.</p> <p>3 A. I don't know. You'd have to</p> <p>4 show me something to confirm that. I don't</p> <p>5 know.</p> <p>6 Q. Can you pull out --</p> <p>7 A. You know, let me tell you</p> <p>8 something. Starting from 1999 through today,</p> <p>9 this program has been talked about in</p> <p>10 virtually every meeting UEP has ever held.</p> <p>11 There has been numerous changes through --</p> <p>12 Q. I'm sorry to interrupt you, but</p> <p>13 we have limited time and I didn't have a</p> <p>14 question pending, so let your counsel ask</p> <p>15 that and let's move on.</p> <p>16 A. You're trying to pinpoint me on</p> <p>17 memories of dates and I can't do that.</p> <p>18 Q. I'm not. I'm asking if you</p> <p>19 knew it. If you don't, we'll move on. So</p> <p>20 let's look at Exhibits 70 and 71 that were</p> <p>21 previously introduced.</p> <p>22 A. That's way back here.</p> <p>23 MS. LEVINE: Bottom of the pile.</p> <p>24 BY MS. CAIN-MANNIX:</p> <p>25 Q. Do you need help finding it?</p>
<p style="text-align: right;">763</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 motion number 3 is clear that it pertains to</p> <p>3 shell egg processors and further egg</p> <p>4 processors --</p> <p>5 MS. LEVINE: Object to the form</p> <p>6 of the question. Restate my objection.</p> <p>7 BY MS. CAIN-MANNIX:</p> <p>8 Q. -- who do not own or operate</p> <p>9 egg producing facilities?</p> <p>10 A. Yes. Yes.</p> <p>11 Q. Let's move on. You can put</p> <p>12 that aside for now.</p> <p>13 Did there come a time,</p> <p>14 Mr. Gregory, when members wanted to get the</p> <p>15 UEP license program back to the extent they</p> <p>16 wanted producers to be able to join in the</p> <p>17 licensing program again?</p> <p>18 MS. LEVINE: Objection.</p> <p>19 THE WITNESS: So if you were a</p> <p>20 producer and you did not want to be a</p> <p>21 UEP certified company, was there a</p> <p>22 time when the producers were asking</p> <p>23 and they would like to have the</p> <p>24 license again, that's the question?</p> <p>25 BY MS. CAIN-MANNIX:</p>	<p style="text-align: right;">765</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. 70 and 71. Okay.</p> <p>3 Q. Is this the meeting you</p> <p>4 attended?</p> <p>5 A. It is.</p> <p>6 MS. LEVINE: Which document are</p> <p>7 you speaking of?</p> <p>8 MS. CAIN-MANNIX: I'm sorry,</p> <p>9 Exhibit 70.</p> <p>10 BY MS. CAIN-MANNIX:</p> <p>11 Q. And at that meeting, did those</p> <p>12 present, which I understand from your prior</p> <p>13 testimony included UEP members and UEA</p> <p>14 further processors --</p> <p>15 A. Yes.</p> <p>16 Q. -- raise a concern or an issue</p> <p>17 regarding the discontinuance of the ACC</p> <p>18 non-certified marketing agreement?</p> <p>19 A. I'm sorry, where are you</p> <p>20 reading that at?</p> <p>21 Q. It's issue number 4.</p> <p>22 A. Yes. What is your point?</p> <p>23 Q. Is that a reference to the</p> <p>24 previous licensing program?</p> <p>25 A. No, that's a -- well, I don't</p>

31 (Pages 762 to 765)

<p style="text-align: right;">766</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 know. It is the point of these people are</p> <p>3 raising issues or concerns about the program.</p> <p>4 I've identified that's one of them.</p> <p>5 Q. You can put that aside.</p> <p>6 We'll look at 71, pages 64 and</p> <p>7 65, "HISTORICAL VIEW OF 'UEP CERTIFIED'</p> <p>8 PROGRAM." This is something that you</p> <p>9 authored. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. At the bottom of this page you</p> <p>12 stated, "With the creation of the 'Animal</p> <p>13 Care Certified' program in 2002, UEP assumed</p> <p>14 management of the program and established</p> <p>15 additional requirements including auditing by</p> <p>16 USDA and ARPAS. The program remained a</p> <p>17 voluntary program for all UEP members and was</p> <p>18 made available to non-UEP members." Correct?</p> <p>19 A. Correct.</p> <p>20 Q. That's a correct statement?</p> <p>21 A. Correct.</p> <p>22 Q. Would non-UEP members that were</p> <p>23 part of the certified program, could they</p> <p>24 attend meetings?</p> <p>25 MS. LEVINE: Object to the form</p>	<p style="text-align: right;">768</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 attend the meeting?</p> <p>3 MS. LEVINE: Did you answer the</p> <p>4 question?</p> <p>5 BY MS. CAIN-MANNIX:</p> <p>6 Q. They were not prohibited --</p> <p>7 A. Pardon?</p> <p>8 Q. I was confused by your answer.</p> <p>9 Were they permitted or not permitted?</p> <p>10 MS. LEVINE: Object to the form</p> <p>11 of the question. If this witness can</p> <p>12 give a general answer to each and</p> <p>13 every committee or board meeting in a</p> <p>14 ten-year period.</p> <p>15 THE WITNESS: They were not</p> <p>16 invited. If you are not an egg</p> <p>17 producer, not a -- I mean, if you're</p> <p>18 not a UEP member, you are not invited</p> <p>19 to any UEP meetings.</p> <p>20 BY MS. CAIN-MANNIX:</p> <p>21 Q. Were you prohibited from</p> <p>22 attending UEP meetings if you were not a</p> <p>23 member, but you were a certified --</p> <p>24 A. Unless they were invited to</p> <p>25 that meeting for some reason and they showed</p>
<p style="text-align: right;">767</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 of the question. Which meetings are</p> <p>3 you asking about?</p> <p>4 MS. CAIN-MANNIX: Board or</p> <p>5 committee meetings of UEP.</p> <p>6 MS. LEVINE: Object to the form</p> <p>7 of the question. It depends. Can you</p> <p>8 identify which board meeting you're</p> <p>9 asking this witness over a ten-year</p> <p>10 period?</p> <p>11 MS. CAIN-MANNIX: I'm asking</p> <p>12 just in general, were they permitted.</p> <p>13 MS. LEVINE: Object to the form</p> <p>14 of the question. If this witness can</p> <p>15 give a general answer as to the</p> <p>16 meetings, you can. If you can't...</p> <p>17 THE WITNESS: It was not to my</p> <p>18 knowledge nor was it -- it was not</p> <p>19 intended that any, and I don't recall</p> <p>20 any of them, that if you were not a</p> <p>21 UEP member, you were not welcome at a</p> <p>22 UEP meeting.</p> <p>23 BY MS. CAIN-MANNIX:</p> <p>24 Q. So you're saying that they were</p> <p>25 not, in general, they were not permitted to</p>	<p style="text-align: right;">769</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 up and were not a member, they were asked to</p> <p>3 leave.</p> <p>4 Q. Did any nonmembers that were</p> <p>5 UEP certified participate in any UEP votes?</p> <p>6 A. No.</p> <p>7 Q. Moving on. Oh, wait. The next</p> <p>8 paragraph talks about fees.</p> <p>9 A. Yes.</p> <p>10 Q. So members and nonmembers were</p> <p>11 subject to a fee for participation in the UEP</p> <p>12 certified program. Correct?</p> <p>13 A. If you were using the program,</p> <p>14 yes, you had to pay a fee.</p> <p>15 Q. Moving down on your historical</p> <p>16 view document, two paragraphs below, the</p> <p>17 reference is the approval of the license and</p> <p>18 marketing agreement, and that it was</p> <p>19 terminated in January 2005. Is that correct?</p> <p>20 MS. LEVINE: Objection to the</p> <p>21 extent this witness can remember.</p> <p>22 THE WITNESS: That is so stated</p> <p>23 that way, but I think there is -- you</p> <p>24 know, I think as time goes on, there</p> <p>25 is some confusing things happening</p>

32 (Pages 766 to 769)

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<p style="text-align: right;">770</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 here.</p> <p>3 BY MS. CAIN-MANNIX:</p> <p>4 Q. We'll try to clear that up.</p> <p>5 You agree with the December 2003 statement</p> <p>6 that it was approved at that time because we</p> <p>7 went over that. Correct?</p> <p>8 MS. LEVINE: Object to the form</p> <p>9 of the question.</p> <p>10 THE WITNESS: Again, if that's</p> <p>11 what I so stated before.</p> <p>12 BY MS. CAIN-MANNIX:</p> <p>13 Q. Are you objecting to the second</p> <p>14 part of that paragraph --</p> <p>15 A. I'm having --</p> <p>16 Q. -- about the termination --</p> <p>17 A. Yes.</p> <p>18 Q. -- in January 2005?</p> <p>19 A. That's the part I'm struggling</p> <p>20 with.</p> <p>21 Q. Was it partially terminated in</p> <p>22 terms of the licensing portion for producers?</p> <p>23 A. That could be what it is. I</p> <p>24 don't know.</p> <p>25 Q. You can put that aside.</p>	<p style="text-align: right;">772</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. It identifies a UEP Animal</p> <p>3 Welfare Committee meeting on May 15 of 2006</p> <p>4 in Washington, D.C.?</p> <p>5 A. Yes.</p> <p>6 Q. Did you attend this meeting?</p> <p>7 A. Yes.</p> <p>8 Q. Did you create these minutes?</p> <p>9 A. Yes.</p> <p>10 Q. Turning to page 56.</p> <p>11 MS. LEVINE: Just for the</p> <p>12 record, you're reading from the Bates</p> <p>13 stamp. It's Bates stamp 56.</p> <p>14 BY MS. CAIN-MANNIX:</p> <p>15 Q. Right. When I say 56, I'm</p> <p>16 referring to the last two numbers of the</p> <p>17 Bates stamp.</p> <p>18 The section "Non-Certified</p> <p>19 License Agreement," if I could just read it.</p> <p>20 "Gregory presented the new License Agreement,</p> <p>21 which prompted the following motion:</p> <p>22 "Motion: It was moved by</p> <p>23 Fortin and seconded by Hickman to approve the</p> <p>24 'License Agreement' for companies that do not</p> <p>25 own layers in company owned, contract farms,</p>
<p style="text-align: right;">771</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 I'm going to show you what</p> <p>3 we'll mark as Exhibit 90.</p> <p>4 - - -</p> <p>5 (Exhibit Gregory-90, Animal</p> <p>6 Welfare Committee October 10, 2006 San</p> <p>7 Antonio, TX, Bates MOARK0027352 -</p> <p>8 MOARK0027389, was marked for</p> <p>9 identification.)</p> <p>10 - - -</p> <p>11 BY MR. OLSON:</p> <p>12 Q. We're going to be focusing on</p> <p>13 page 56 of this document.</p> <p>14 MS. ANDERSON: Bates?</p> <p>15 MS. CAIN-MANNIX: Oh, sure.</p> <p>16 It's MOARK0027352 through MOARK0027386</p> <p>17 (sic).</p> <p>18 BY MS. CAIN-MANNIX:</p> <p>19 Q. Do you recognize this document?</p> <p>20 A. I accept it based on what it</p> <p>21 states it is.</p> <p>22 Q. Focusing your attention on the</p> <p>23 minutes of the meeting beginning at page 55</p> <p>24 of this packet.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">773</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 or affiliate facilities and for egg</p> <p>3 production companies having made a commitment</p> <p>4 to meet the 100% rule while implementing the</p> <p>5 cage space requirements of UEP's established</p> <p>6 hatch schedule currently in effect. Motion</p> <p>7 carried unanimously."</p> <p>8 Does this -- do you recall this</p> <p>9 particular motion?</p> <p>10 A. I recall -- I accept it for</p> <p>11 what it says there.</p> <p>12 Q. And it was a modification --</p> <p>13 A. I would assume so, yes.</p> <p>14 Q. -- to the program?</p> <p>15 A. Yes.</p> <p>16 Q. It now allowed producers to</p> <p>17 have a non-certified license agreement. Is</p> <p>18 that correct?</p> <p>19 A. I don't think it reads that</p> <p>20 way, no.</p> <p>21 MR. McKENNEY: Object to the</p> <p>22 extent it mischaracterizes the</p> <p>23 document.</p> <p>24 BY MS. CAIN-MANNIX:</p> <p>25 Q. The second half of the motion</p>

33 (Pages 770 to 773)

<p style="text-align: right;">774</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 applies to "...egg production companies</p> <p>3 having made a commitment to meet the 100%</p> <p>4 rule while implementing the cage space</p> <p>5 requirements of UEP's established hatch</p> <p>6 schedule currently in effect." Wouldn't that</p> <p>7 be producers?</p> <p>8 A. That would be those producers</p> <p>9 that are -- have committed to be on the UEP</p> <p>10 certified program.</p> <p>11 Q. But they're just obtaining a</p> <p>12 license, not -- they're not on the UEP</p> <p>13 certified program.</p> <p>14 A. No, they are on the UEP</p> <p>15 certified program.</p> <p>16 Q. The heading states</p> <p>17 "Non-Certified License Agreement."</p> <p>18 A. Right. I see you're trying</p> <p>19 to -- you're tamping my memory and I'm trying</p> <p>20 to remember a sequence of events. I'm trying</p> <p>21 to remember what is going on here. There was</p> <p>22 a situation where there was -- hang on a</p> <p>23 second. There was a company being bought out</p> <p>24 by a UEP certified company, and our rule says</p> <p>25 that in order to be a UEP certified company,</p>	<p style="text-align: right;">776</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 and they did not want to be marketing</p> <p>3 anything that was not UEP certified eggs.</p> <p>4 So they came to us and I worked</p> <p>5 with them, and another company if you want to</p> <p>6 know later on, to try to figure out a way not</p> <p>7 to disrupt the market. And we figured out, I</p> <p>8 come up with an idea that I presented that</p> <p>9 said, okay, you're not going to lose your</p> <p>10 licensing on your own eggs or your ability to</p> <p>11 market eggs, own eggs. What we're going to</p> <p>12 do is bridge this thing, we will give you a</p> <p>13 license agreement in this case which --</p> <p>14 Q. Golden Oval, just so we're on</p> <p>15 the same page.</p> <p>16 A. We will give Moark Productions</p> <p>17 a license agreement as such that says that</p> <p>18 they can continue to market those Golden Oval</p> <p>19 eggs but not as UEP certified until they</p> <p>20 become 100 percent on their farms. So we</p> <p>21 worked with Golden Oval and we laid out a</p> <p>22 schedule by which they would repopulate</p> <p>23 houses over the period of the next few years.</p> <p>24 Those eggs could not be marketed as UEP</p> <p>25 certified until it was 100 percent, but</p>
<p style="text-align: right;">775</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 recognized as UEP certified company, you have</p> <p>3 to do this on 100 percent of all your farms.</p> <p>4 Okay. So now this company is buying another</p> <p>5 rather large egg company, and that egg</p> <p>6 company is not a UEP certified company, but</p> <p>7 the company that is buying this company is a</p> <p>8 rather large company with a prominent brand</p> <p>9 in the market all over the country. And</p> <p>10 their attitude was that we do not want to</p> <p>11 market any eggs that are not UEP certified.</p> <p>12 We don't want to take any risk. Is there a</p> <p>13 way to work with this and can your rules be</p> <p>14 modified to allow us somehow or another to</p> <p>15 come in the program without completely losing</p> <p>16 our certification on all the birds we've been</p> <p>17 committed to all this time. The company was</p> <p>18 Golden Oval and it was being sold to Moark</p> <p>19 Productions, the name changes, to Moark</p> <p>20 Productions, and Moark Productions had a --</p> <p>21 at that -- again, I apologize because I don't</p> <p>22 know the dates of all this stuff, Moark</p> <p>23 Productions had sold 50 percent of their</p> <p>24 company to Land O'Lakes and Land O'Lakes'</p> <p>25 label is in the market all over the country,</p>	<p style="text-align: right;">777</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 rather than jeopardize their UEP certified,</p> <p>3 we were bridging the gap by giving a license</p> <p>4 agreement to allow this to happen. Otherwise</p> <p>5 it would have forced a company, a large</p> <p>6 company, out of the ability to market UEP</p> <p>7 certified eggs or it might have interfered</p> <p>8 with the acquisition of that company. So we</p> <p>9 tried to figure out a way to bridge this.</p> <p>10 And the board is accepting that. And we</p> <p>11 also, I don't mean to -- but we also then</p> <p>12 used this same opportunity of then to allow</p> <p>13 Michael Foods to come into it, to a point it</p> <p>14 allowed Michael Foods then to buy Animal Care</p> <p>15 Certified or UEP certified eggs from</p> <p>16 certified companies to provide -- to fill</p> <p>17 their market orders from customers that</p> <p>18 wanted those eggs. In the meantime, they had</p> <p>19 to make a commitment that all of their 13</p> <p>20 million hens would on a repopulate schedule</p> <p>21 meet this program. And in the meantime, they</p> <p>22 could not market any of their own eggs as UEP</p> <p>23 certified until it was complete. So there's</p> <p>24 a license agreement in place to allow for</p> <p>25 this exception because of what's going on in</p>

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<p style="text-align: right;">778</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 the market, and we were trying not to have a</p> <p>3 market disruption.</p> <p>4 Q. So if I understood your</p> <p>5 testimony, there were essentially two</p> <p>6 exceptions, and this motion was to address</p> <p>7 those. One was --</p> <p>8 A. That was the case.</p> <p>9 Q. Wait. Let me finish. Moark</p> <p>10 and Golden Oval eggs, number one; exception</p> <p>11 number two, Michael Foods?</p> <p>12 A. Yes, but we put it in as a</p> <p>13 policy. We didn't say this was only for</p> <p>14 these people. This would be something that</p> <p>15 would be available thereafter if -- for any</p> <p>16 company needing to use it.</p> <p>17 Q. Did any other company need to</p> <p>18 use it later?</p> <p>19 MS. LEVINE: Sorry?</p> <p>20 BY MS. CAIN-MANNIX:</p> <p>21 Q. You know, we identified two</p> <p>22 exceptions. Did others take advantage of the</p> <p>23 policy after these two?</p> <p>24 A. You know, I don't recall. And</p> <p>25 I recall these two because it was a point in</p>	<p style="text-align: right;">780</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. I'm sorry?</p> <p>3 Q. Does looking at the date of the</p> <p>4 minutes help, May 15, 2006?</p> <p>5 A. Yes, it does, but what I'm</p> <p>6 trying to explain to you, that there's a</p> <p>7 whole series of meetings taking place and</p> <p>8 this program has changed over the years to a</p> <p>9 point. And I don't know about this</p> <p>10 particular issue, the license agreement, you</p> <p>11 know, the evolution of what all that was.</p> <p>12 I'm not trying to evade your question. I'm</p> <p>13 just trying to be careful and not tell you</p> <p>14 something.</p> <p>15 Q. Thank you. I'm going to move</p> <p>16 on. You can put that aside. I'm going to</p> <p>17 show you what we'll mark as Exhibit 91.</p> <p>18 - - -</p> <p>19 (Exhibit Gregory-91, 1/20/09</p> <p>20 United Voices, Bates RWS 000000775 -</p> <p>21 RWS 000000781, was marked for</p> <p>22 identification.)</p> <p>23 - - -</p> <p>24 BY MS. CAIN-MANNIX:</p> <p>25 Q. I want to focus your attention</p>
<p style="text-align: right;">779</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 time when there was great debate going on</p> <p>3 about this and how we were going to handle</p> <p>4 this. Thereafter, I don't recall if anybody</p> <p>5 took advantage of it or not.</p> <p>6 My point of this is you're</p> <p>7 trying to pin me down on dates and on</p> <p>8 motions. What I'm trying to explain to</p> <p>9 you --</p> <p>10 Q. No, I'm not. I'm trying to ask</p> <p>11 if you remember. And if you don't, it's</p> <p>12 okay.</p> <p>13 A. There's a series of events</p> <p>14 that's taking place here.</p> <p>15 Q. I understand. It's okay if you</p> <p>16 don't remember. I'm just asking if you do</p> <p>17 know.</p> <p>18 MS. LEVINE: I think what he's</p> <p>19 objecting to is you trying to pin him</p> <p>20 to a date. He does remember the</p> <p>21 sequence, he doesn't remember the</p> <p>22 date.</p> <p>23 BY MS. CAIN-MANNIX:</p> <p>24 Q. Does looking at the date of the</p> <p>25 minutes help?</p>	<p style="text-align: right;">781</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 on the first page, the second from the bottom</p> <p>3 paragraph.</p> <p>4 MS. ZIEMIANEK: Could you state</p> <p>5 the Bates number for that?</p> <p>6 MS. CAIN-MANNIX: RWS 775. It's</p> <p>7 got about five zeros in front of that.</p> <p>8 BY MS. CAIN-MANNIX:</p> <p>9 Q. It states in the middle of the</p> <p>10 paragraph, the second from the bottom, "UEP</p> <p>11 meetings have always been open to everyone</p> <p>12 and therefore we apologize that circumstances</p> <p>13 now warrant some meetings or portions of some</p> <p>14 meetings to be closed to selected members.</p> <p>15 We hope allied members and others will be</p> <p>16 understanding."</p> <p>17 Does this refresh your</p> <p>18 recollection about the meeting policy?</p> <p>19 A. Yes.</p> <p>20 MS. LEVINE: Object to the form</p> <p>21 of the question.</p> <p>22 BY MS. CAIN-MANNIX:</p> <p>23 Q. Essentially at that time, that</p> <p>24 was the first time that you were saying</p> <p>25 nonmembers or selected members of other</p>

35 (Pages 778 to 781)

<p style="text-align: right;">782</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 allied divisions could no longer attend</p> <p>3 meetings?</p> <p>4 MS. LEVINE: Object to the form</p> <p>5 of the question.</p> <p>6 THE WITNESS: There has always</p> <p>7 been UEP meetings that are closed,</p> <p>8 Executive Committee meetings were</p> <p>9 always closed. Committee or boards at</p> <p>10 times have gone into executive</p> <p>11 sessions. But other than those, our</p> <p>12 meetings were rather open as an</p> <p>13 education of what's going on in the</p> <p>14 industry about all kinds of things.</p> <p>15 What we're doing here is making</p> <p>16 acknowledgment at this point in time</p> <p>17 because of the lawsuit filed against</p> <p>18 us in October or whenever the date was</p> <p>19 in 2000 -- September 2008, we now are</p> <p>20 saying that we're going to -- what</p> <p>21 we're trying to say to you, don't be</p> <p>22 offended now because we are going to</p> <p>23 tell you up front this is what's going</p> <p>24 to happen.</p> <p>25 MS. CAIN-MANNIX: Thank you.</p>	<p style="text-align: right;">784</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Good morning.</p> <p>3 Q. I will try to run through some</p> <p>4 stuff very briefly and so we can get a move</p> <p>5 on for today.</p> <p>6 First thing I want to ask you,</p> <p>7 though, I want to take you back to the</p> <p>8 beginning, I guess.</p> <p>9 A. The beginning of time or --</p> <p>10 Q. Pretty much. The beginning of</p> <p>11 your time in the egg industry. You've been</p> <p>12 involved in the egg industry for over 50</p> <p>13 years?</p> <p>14 A. Yes.</p> <p>15 MS. LEVIN: Could you speak up?</p> <p>16 It is impossible for me to hear.</p> <p>17 BY MR. SLIDERS:</p> <p>18 Q. I'm sorry, I have an accent.</p> <p>19 If you can't understand me, just stop me.</p> <p>20 A. Where are you from?</p> <p>21 Q. I'm Australian.</p> <p>22 MS. LEVINE: I don't think it</p> <p>23 was the accent, I think it was that it</p> <p>24 wasn't loud enough.</p> <p>25 BY MR. SLIDERS:</p>
<p style="text-align: right;">783</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 I'm going to pass to my colleague.</p> <p>3 MR. SLIDERS: Go off the record</p> <p>4 for a couple of minutes.</p> <p>5 VIDEOGRAPHER: The time is</p> <p>6 approximately 10:43 a.m. We're off</p> <p>7 the record.</p> <p>8 - - -</p> <p>9 (A recess was taken.)</p> <p>10 - - -</p> <p>11 VIDEOGRAPHER: The time is</p> <p>12 approximately 10:51 a.m. This begins</p> <p>13 tape three, volume three. We are back</p> <p>14 on the record.</p> <p>15 - - -</p> <p>16 EXAMINATION</p> <p>17 - - -</p> <p>18 BY MR. SLIDERS:</p> <p>19 Q. Good morning, Mr. Gregory.</p> <p>20 VIDEOGRAPHER: Put on your</p> <p>21 microphone.</p> <p>22 BY MR. SLIDERS:</p> <p>23 Q. Good morning. My name is</p> <p>24 Charles Slidders. I'm for the Indirect</p> <p>25 Purchaser Plaintiffs.</p>	<p style="text-align: right;">785</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. So 50 years ago, you started</p> <p>3 working in the egg industry?</p> <p>4 A. I think the year was 1960, in</p> <p>5 fact.</p> <p>6 Q. Who did you start working with</p> <p>7 then?</p> <p>8 A. The company was Cornbelt</p> <p>9 Hatcheries.</p> <p>10 Q. And you rose up through the</p> <p>11 ranks of Cornbelt Hatcheries to eventually</p> <p>12 become the general manager?</p> <p>13 A. Surprisingly, yes.</p> <p>14 Q. And as general manager, your</p> <p>15 role was to oversee the whole facilities?</p> <p>16 A. Yes.</p> <p>17 Q. All the sales and marketing of</p> <p>18 the eggs?</p> <p>19 A. Yes.</p> <p>20 Q. No problem. And then for the</p> <p>21 last 30 years you've been involved in first</p> <p>22 the Midwest Poultry Association and then UEP</p> <p>23 as vice president and now the UEP as</p> <p>24 president?</p> <p>25 A. Yes, I served on the Board of</p>

36 (Pages 782 to 785)

<p style="text-align: right;">786</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Directors as an egg producer during some of</p> <p>3 those years, and I was really interested in</p> <p>4 the organization, so in 1982, I changed</p> <p>5 careers and go to work for Midwest United Egg</p> <p>6 Producers at that time.</p> <p>7 Q. Now, as I understand it, what</p> <p>8 we've seen over the last couple of days</p> <p>9 you've written extensively on economic</p> <p>10 issues?</p> <p>11 MS. LEVINE: Object to form of</p> <p>12 the question. Mischaracterized what</p> <p>13 the witness has testified time and</p> <p>14 time again.</p> <p>15 THE WITNESS: It's been obvious</p> <p>16 that I've written far too much.</p> <p>17 BY MR. SLIDDERS:</p> <p>18 Q. I understand that you're not an</p> <p>19 economist?</p> <p>20 A. That's correct.</p> <p>21 Q. But you have a fair</p> <p>22 understanding of economic issues as they</p> <p>23 relate to the egg industry?</p> <p>24 MS. LEVINE: Object to the form</p> <p>25 of the question. The witness has</p>	<p style="text-align: right;">788</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 by you to all. Who is the "all"?</p> <p>3 A. You know, I don't know. I</p> <p>4 would --</p> <p>5 MS. LEVINE: Mr. Gregory, don't</p> <p>6 guess. If you know the answer, you</p> <p>7 can so state. If you don't --</p> <p>8 BY MR. SLIDDERS:</p> <p>9 Q. If you don't know, that's fine.</p> <p>10 A. I don't know who "all" was at</p> <p>11 that point.</p> <p>12 Q. Now I'd like to exhibit another</p> <p>13 document.</p> <p>14 - - -</p> <p>15 (Exhibit Gregory-93, Impacts of</p> <p>16 Banning Modern Cage Egg Production in</p> <p>17 the United States press release, Bates</p> <p>18 CM00187932 - CM00187935, was marked</p> <p>19 for identification.)</p> <p>20 - - -</p> <p>21 BY MR. SLIDDERS:</p> <p>22 Q. A document Exhibit 93, which I</p> <p>23 believe is a press release with Bates number</p> <p>24 CM00187932. Can you identify that document?</p> <p>25 A. Yes, I do.</p>
<p style="text-align: right;">787</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 testified to this.</p> <p>3 THE WITNESS: Based on having</p> <p>4 been an egg producer, I went through</p> <p>5 times of losing money, and it made me</p> <p>6 pay more attention to some things</p> <p>7 because of that.</p> <p>8 BY MR. SLIDDERS:</p> <p>9 Q. I understand. If I could give</p> <p>10 you what I will mark Exhibit 92, which is an</p> <p>11 e-mail chain, it's a one page e-mail chain</p> <p>12 and it's Bates stamped CF0008607.</p> <p>13 - - -</p> <p>14 (Exhibit Gregory-92, E-mail</p> <p>15 chain, Bates CF0008607, was marked for</p> <p>16 identification.)</p> <p>17 - - -</p> <p>18 BY MR. SLIDDERS:</p> <p>19 Q. If you could just quickly look</p> <p>20 through that e-mail.</p> <p>21 A. Yes, I've read it.</p> <p>22 Q. Can you identify that e-mail?</p> <p>23 A. Yes, I can.</p> <p>24 Q. And that is an e-mail written</p> <p>25 by -- the second e-mail is an e-mail written</p>	<p style="text-align: right;">789</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Is that a press release</p> <p>3 entitled, "IMPACTS OF BANNING MODERN CAGE EGG</p> <p>4 PRODUCTION IN THE UNITED STATES"?</p> <p>5 A. I don't know whether it's a</p> <p>6 press release because it doesn't state that</p> <p>7 it's a press release. It might have been,</p> <p>8 but I don't know that.</p> <p>9 Q. If we go back to the e-mail.</p> <p>10 A. Yes.</p> <p>11 Q. If we go to the last line, it</p> <p>12 says, "You will find attached press releases</p> <p>13 that are being released to the media today by</p> <p>14 Golin Harris."</p> <p>15 MS. LEVINE: Object to the form</p> <p>16 of the question. Lacks foundation</p> <p>17 that these two documents go together.</p> <p>18 BY MR. SLIDDERS:</p> <p>19 Q. Is this a press release that</p> <p>20 was attached to that e-mail?</p> <p>21 A. I don't know.</p> <p>22 Q. If I could now exhibit another</p> <p>23 document.</p> <p>24 - - -</p> <p>25 (Exhibit Gregory-94, Impacts of</p>

37 (Pages 786 to 789)

<p style="text-align: right;">790</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Banning Cage Egg Production in the</p> <p>3 United States report, Bates</p> <p>4 CPCEGED00132106 - CPCEGED00132145, was</p> <p>5 marked for identification.)</p> <p>6 - - -</p> <p>7 MS. LEVINE: He's on to the next</p> <p>8 document.</p> <p>9 THE WITNESS: I'm just trying to</p> <p>10 refresh my memory about something</p> <p>11 here.</p> <p>12 MR. SLIDDERS: What are we up</p> <p>13 to?</p> <p>14 MS. LEVINE: 94.</p> <p>15 BY MR. SLIDDERS:</p> <p>16 Q. Now, Mr. Gregory, this is a</p> <p>17 report titled, "Impacts of Banning Cage Egg</p> <p>18 Production in the United States."</p> <p>19 A. Yes.</p> <p>20 Q. Can you identify this document?</p> <p>21 A. Yes.</p> <p>22 Q. If you go further down the page</p> <p>23 it says, "A report prepared for United Egg</p> <p>24 Producers."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">792</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 for identification.)</p> <p>3 - - -</p> <p>4 BY MR. SLIDDERS:</p> <p>5 Q. I'd like to tender Exhibit 95,</p> <p>6 a document "UEP Board of Directors' Minutes,"</p> <p>7 Bates numbered UB00007529.</p> <p>8 Can you identify this document?</p> <p>9 A. Yes, I do.</p> <p>10 Q. What is this document?</p> <p>11 A. It's the minutes of a Board of</p> <p>12 Directors' meeting in October 2009.</p> <p>13 Q. Now, you'll see a number of</p> <p>14 people's names besides "Board & Staff."</p> <p>15 A. Yes.</p> <p>16 Q. Were they presented with this</p> <p>17 document, exhibit -- primary agreement, the</p> <p>18 primary report?</p> <p>19 MS. LEVINE: Object to the form</p> <p>20 of the question. If the witness can</p> <p>21 recall this meeting, he can answer.</p> <p>22 THE WITNESS: You know, I have</p> <p>23 my doubts that it was. I think it</p> <p>24 would have been given to only UEP</p> <p>25 members.</p>
<p style="text-align: right;">791</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Now, if you go back to the</p> <p>4 e-mail, and then if you go to the first</p> <p>5 paragraph, it says, "UEP contracted with</p> <p>6 Promar International to do an economic study</p> <p>7 of the 'Impacts of Banning Cage Egg</p> <p>8 Production in the United States'. This study</p> <p>9 is now complete and a copy of the study will</p> <p>10 be handed out next week during your Annual</p> <p>11 Meeting in Hawaii."</p> <p>12 A. Yes.</p> <p>13 Q. Was this that study?</p> <p>14 A. I'm sure it must be.</p> <p>15 Q. Thank you.</p> <p>16 A. There's a reason why this study</p> <p>17 was done, but I don't know -- sure you have</p> <p>18 time for me to answer you, but if you're</p> <p>19 interested --</p> <p>20 Q. Potentially not. We can talk</p> <p>21 later.</p> <p>22 - - -</p> <p>23 (Exhibit Gregory-95, UEP Board</p> <p>24 of Directors' Meeting, Bates</p> <p>25 UB00007529 - UB00007534, was marked</p>	<p style="text-align: right;">793</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. SLIDDERS:</p> <p>3 Q. So UEP members would have</p> <p>4 received a copy of this report?</p> <p>5 A. I think at some point in time,</p> <p>6 either through this meeting or a mailing or</p> <p>7 whatever it is, I think that we provided it</p> <p>8 to all members.</p> <p>9 Q. Did you provide it to anyone</p> <p>10 else?</p> <p>11 MS. LEVINE: Object to the form</p> <p>12 of the question. To the extent</p> <p>13 that --</p> <p>14 BY MR. SLIDDERS:</p> <p>15 Q. If you can recall.</p> <p>16 MS. LEVINE: -- this witness can</p> <p>17 recall facts like that back to 2009.</p> <p>18 THE WITNESS: I don't recall.</p> <p>19 BY MR. SLIDDERS:</p> <p>20 Q. That's fine.</p> <p>21 If we could go to the press</p> <p>22 release.</p> <p>23 MS. LEVINE: Object to the form</p> <p>24 of the question. Mischaracterizes the</p> <p>25 document.</p>

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<p style="text-align: right;">794</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. SLIDDERS: Sorry.</p> <p>3 BY MR. SLIDDERS:</p> <p>4 Q. If we could go back to the</p> <p>5 press release exhibit --</p> <p>6 MS. LEVINE: It's Gregory-93, I</p> <p>7 think, is what is being referred to.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. SLIDDERS:</p> <p>10 Q. That's entitled, do you see</p> <p>11 under where it says, "IMPACTS OF BANNING</p> <p>12 MODERN CAGE EGG PRODUCTION IN THE UNITED</p> <p>13 STATES"?</p> <p>14 A. Yes.</p> <p>15 Q. Then under that part it says,</p> <p>16 "Highlights from the report by Promar</p> <p>17 International October 2009."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And then if you go to the last</p> <p>21 paragraph on the first page under -- before</p> <p>22 "SUMMARY OF TOP FINDINGS," under "STUDY</p> <p>23 PURPOSE AND METHODS," the third paragraph, it</p> <p>24 says, "United Egg Producers contracted with</p> <p>25 Promar International...for this report.</p>	<p style="text-align: right;">796</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes, I do, but -- oh, gosh.</p> <p>3 Q. Was it Tom Earley?</p> <p>4 A. Yes. Yes. Tom Earley.</p> <p>5 Q. Now, if we can go to what I'll</p> <p>6 call the ProMar report, and if we can turn to</p> <p>7 page 5.</p> <p>8 A. Okay.</p> <p>9 Q. And if you see the second</p> <p>10 paragraph there in the second sentence, "The</p> <p>11 table egg industry is the dominant component</p> <p>12 of the US egg industry, and accounts for</p> <p>13 approximately 80 percent of the national egg</p> <p>14 layer flock, and 85 percent of egg</p> <p>15 production."</p> <p>16 Do you see that?</p> <p>17 A. Yeah, but I'm not sure that is</p> <p>18 correct. Let me think. The table egg</p> <p>19 industry --</p> <p>20 Q. Well, I have a question</p> <p>21 that's --</p> <p>22 A. Okay.</p> <p>23 Q. What is a table egg industry?</p> <p>24 What are table eggs?</p> <p>25 A. I think what he's measured here</p>
<p style="text-align: right;">795</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Promar International...is an independent,</p> <p>3 nationally-respected agricultural economic</p> <p>4 consulting firm based in Washington, D.C."</p> <p>5 A. Yes.</p> <p>6 Q. Do you see that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Did the UEP contract with</p> <p>9 ProMar for the report, the ProMar report?</p> <p>10 A. As I recall, this came about</p> <p>11 through our public relations firm</p> <p>12 GolinHarris, their recommendation, I don't</p> <p>13 know whether they contracted with them or we</p> <p>14 contracted with ProMar, but it was all</p> <p>15 connected through them.</p> <p>16 Q. This is a statement that</p> <p>17 "ProMar is an independent nationally-respected</p> <p>18 agricultural economic consulting firm based</p> <p>19 in Washington," to your knowledge correct?</p> <p>20 A. Yes, it is, although they</p> <p>21 changed their name now.</p> <p>22 Q. What is their name now?</p> <p>23 A. Agralytica I believe it is.</p> <p>24 Q. Do you know who prepared the</p> <p>25 report?</p>	<p style="text-align: right;">797</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 and what USDA reports is that -- USDA reports</p> <p>3 as such all layers as an example, and all</p> <p>4 layers is egg laying hens, breeder flock</p> <p>5 hens. You know, there's -- so forth. So it</p> <p>6 doesn't include just those eggs for the</p> <p>7 consumer market. And then we break that out</p> <p>8 and USDA reports it out that what are table</p> <p>9 egg layers. Those are just for the consumer</p> <p>10 market. And that -- so what he's saying here</p> <p>11 is that of the total USDA numbers, this is</p> <p>12 the percentage of those total eggs that USDA</p> <p>13 reports as being table egg layers -- table</p> <p>14 egg layers.</p> <p>15 Q. Now, if we can turn to page 10</p> <p>16 of this report. The first sentence it says,</p> <p>17 "Fresh shell table eggs are the principle</p> <p>18 (sic) egg product consumed in the United</p> <p>19 States."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. What are fresh shell table</p> <p>23 eggs?</p> <p>24 MS. LEVINE: Object to the form</p> <p>25 as any kind of speculation by Tom</p>

39 (Pages 794 to 797)

<p style="text-align: right;">798</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Earley who wrote this document.</p> <p>3 Mr. Gregory can certainly answer a</p> <p>4 question as to what his understanding</p> <p>5 of fresh eggs.</p> <p>6 BY MR. SLIDDERS:</p> <p>7 Q. What is your understanding of</p> <p>8 fresh shell table eggs are?</p> <p>9 A. I think he's trying to break</p> <p>10 this out that in the wordings shell eggs is a</p> <p>11 keyword here. He's trying to say that there</p> <p>12 are more shell eggs, like cartoned eggs or</p> <p>13 that kind of thing, that are purchased than</p> <p>14 there are egg products. So he's</p> <p>15 differentiating between shell eggs and egg</p> <p>16 products, I think is what is going on here.</p> <p>17 Q. So fresh shell table eggs, as</p> <p>18 you understand it, is that a subset of table</p> <p>19 eggs?</p> <p>20 MS. LEVINE: Object to the form</p> <p>21 of the question.</p> <p>22 THE WITNESS: No, no, no. Table</p> <p>23 eggs as USDA reports and what he's</p> <p>24 doing here encompasses all the eggs</p> <p>25 sold in carton as well as those that</p>	<p style="text-align: right;">800</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 second paragraph it says, "Overall prices at</p> <p>3 the farm, wholesale, and retail levels tend</p> <p>4 to move in close correlation with one</p> <p>5 another."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. To your understanding, is that</p> <p>9 a true statement?</p> <p>10 MS. LEVINE: Object to the form</p> <p>11 of the question. If this witness can</p> <p>12 testify to this economic report, you</p> <p>13 may do so. If not...</p> <p>14 THE WITNESS: I don't know, I</p> <p>15 think what he's trying to say is that</p> <p>16 as farm price goes up or down, you</p> <p>17 know, the price at the wholesale and</p> <p>18 then the price at the retail levels,</p> <p>19 there is a markup as such between -- I</p> <p>20 think they're flown in correlation is</p> <p>21 what he's trying to say here.</p> <p>22 BY MR. SLIDDERS:</p> <p>23 Q. To your knowledge, is that</p> <p>24 true?</p> <p>25 MS. LEVINE: Object to the form</p>
<p style="text-align: right;">799</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 are in egg products.</p> <p>3 BY MR. SLIDDERS:</p> <p>4 Q. So as you understand it, is the</p> <p>5 shell egg industry or the fresh shell eggs</p> <p>6 the dominant portion of the table egg</p> <p>7 industry?</p> <p>8 A. Yeah, I don't know what he</p> <p>9 reports here, but generally the egg products</p> <p>10 business uses about 30, 32 percent of the egg</p> <p>11 production.</p> <p>12 Q. I understand. Now, if you go</p> <p>13 to the last paragraph on page 10, the first</p> <p>14 sentence says, "Shell eggs are the most</p> <p>15 prevalent from of table egg consumption and</p> <p>16 are a staple for retail household</p> <p>17 consumption, bakeries, hotels, restaurants,</p> <p>18 and catering food service operations."</p> <p>19 Now, what is your understanding</p> <p>20 of what that means?</p> <p>21 A. I think what he is -- well, I</p> <p>22 don't know. I don't want to speculate on it.</p> <p>23 I don't want to misinterpret something.</p> <p>24 Q. If you turn to page 12 of the</p> <p>25 ProMar report, in the third sentence of the</p>	<p style="text-align: right;">801</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 of the question. If Mr. Gregory has</p> <p>3 economic facts to support that one way</p> <p>4 or another, he can testify.</p> <p>5 THE WITNESS: You know, again,</p> <p>6 I'm just trying to be as -- what we</p> <p>7 have observed is in the last several</p> <p>8 years, the margin that the retailer is</p> <p>9 taking in the spread between what farm</p> <p>10 price and retail price, that spread</p> <p>11 has widened considerably, you know,</p> <p>12 it's more than -- it's doubled in the</p> <p>13 last few years.</p> <p>14 BY MR. SLIDDERS:</p> <p>15 Q. What does that mean?</p> <p>16 A. I think what it means -- now,</p> <p>17 I'm not a retailer and I can't speak for</p> <p>18 them, but I think that it means that</p> <p>19 retailers found out that they could leave</p> <p>20 prices of eggs at a certain point, a high</p> <p>21 point, whatever it is, and consumers would</p> <p>22 buy as many of those eggs as they would</p> <p>23 otherwise. And if farm prices as such go in</p> <p>24 the tank, they didn't necessarily need to</p> <p>25 lower their prices because farm prices went</p>

40 (Pages 798 to 801)

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<p style="text-align: right;">802</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 in the tank, even though they're buying them</p> <p>3 much cheaper now and therefore they can make</p> <p>4 a much better spread. For their business,</p> <p>5 it's no reason to lower the price just</p> <p>6 because farm prices went down.</p> <p>7 Q. How about if farm prices went</p> <p>8 up?</p> <p>9 MR. McKENNEY: Objection to form</p> <p>10 of the question.</p> <p>11 MS. LEVINE: Object to the form</p> <p>12 of the question. If this witness can</p> <p>13 answer --</p> <p>14 BY MR. SLIDDERS:</p> <p>15 Q. In your observations.</p> <p>16 A. In my observation, they have</p> <p>17 now established a spread that is good for</p> <p>18 their business. And if the market goes up,</p> <p>19 you know, they will -- their prices will go</p> <p>20 up accordingly. But I also have to recognize</p> <p>21 that it's in the marketplace, they're not</p> <p>22 willing to change prices all the time. I'm</p> <p>23 being sensitive to their business as well.</p> <p>24 They don't need this real cycle business.</p> <p>25 Q. If we go back to page 12, or</p>	<p style="text-align: right;">804</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 of the question. If this witness is</p> <p>3 able to answer from his own personal</p> <p>4 knowledge, he can answer. Otherwise,</p> <p>5 he should not speculate as he's</p> <p>6 reading from a document from an</p> <p>7 economist's report.</p> <p>8 THE WITNESS: Yeah, I think what</p> <p>9 he's trying to say, based on the</p> <p>10 history, you know, there was a time</p> <p>11 when we all -- when -- what has</p> <p>12 changed is because of improved</p> <p>13 transportation that, yes, eggs flow</p> <p>14 all across the country. You may</p> <p>15 produce eggs in Iowa and deliver them</p> <p>16 to California as an example. And so</p> <p>17 he's talking about it such as a</p> <p>18 national commodity now. And that's</p> <p>19 one of the very reasons why we're</p> <p>20 trying to pass federal legislation</p> <p>21 now.</p> <p>22 BY MR. SLIDDERS:</p> <p>23 Q. You can put those aside now.</p> <p>24 A. Please understand, I'm trying</p> <p>25 to evaluate what I think he's trying to say.</p>
<p style="text-align: right;">803</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 are we on page 12?</p> <p>3 A. Page 12, yes.</p> <p>4 Q. In the second sentence of the</p> <p>5 second paragraph it says, "However, improved</p> <p>6 transportation and handling technology as</p> <p>7 well as nationwide price differentials in egg</p> <p>8 producer prices have encouraged a nationwide</p> <p>9 market and interstate trade for table eggs."</p> <p>10 A. I'm sorry, I lost you there.</p> <p>11 We're on page 12?</p> <p>12 Q. Page 12, second paragraph,</p> <p>13 second sentence, beginning with, "However..."</p> <p>14 A. Okay. Yeah. I was looking</p> <p>15 down the next paragraph. Okay.</p> <p>16 Q. It says, "...improved</p> <p>17 transportation and handling technology as</p> <p>18 well as nationwide price differentials in egg</p> <p>19 producer prices have encouraged a nationwide</p> <p>20 market and interstate trade for table eggs."</p> <p>21 To your knowledge as a person</p> <p>22 with 50 years' experience in the egg</p> <p>23 industry, is there a nationwide market for</p> <p>24 eggs?</p> <p>25 MS. LEVINE: Object to the form</p>	<p style="text-align: right;">805</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. I understand, Mr. Gregory.</p> <p>3 This is the next exhibit, 96. It is an</p> <p>4 e-mail from you to all again dated Friday</p> <p>5 June 8, 2012.</p> <p>6 - - -</p> <p>7 (Exhibit Gregory-96, E-mail</p> <p>8 chain, Bates CF0005677, was marked for</p> <p>9 identification.)</p> <p>10 - - -</p> <p>11 MS. ANDERSON: Counsel, the</p> <p>12 Bates?</p> <p>13 MR. SLIDDERS: CF0005677.</p> <p>14 For expediency I will also</p> <p>15 exhibit document 97 which is entitled,</p> <p>16 "Economic Impacts of Converting US</p> <p>17 Production to Enrich Cage Systems."</p> <p>18 - - -</p> <p>19 (Exhibit Gregory-97, Economic</p> <p>20 Impacts of Converting US Production to</p> <p>21 Enrich Cage Systems, Bates CF0005678 -</p> <p>22 CF0005704, was marked for</p> <p>23 identification.)</p> <p>24 - - -</p> <p>25 MS. ZIEMIANEK: Bates number on</p>

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<p style="text-align: right;">806</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 that?</p> <p>3 MR. SLIDDERS: CF0005678. My</p> <p>4 apologies.</p> <p>5 THE WITNESS: The question is?</p> <p>6 BY MR. SLIDDERS:</p> <p>7 Q. I think you testified earlier</p> <p>8 that ProMar had changed its name to</p> <p>9 Agralytica?</p> <p>10 A. Yes.</p> <p>11 Q. Do you identify this e-mail in</p> <p>12 front of you?</p> <p>13 A. Yes. It was an e-mail I sent</p> <p>14 to the Board of Directors.</p> <p>15 Q. And it refers to, if you go to</p> <p>16 the second paragraph, and the third</p> <p>17 paragraph, it refers to "the attached</p> <p>18 report." Is that the attached report, the</p> <p>19 Agralytica report that is being marked as</p> <p>20 Exhibit 98?</p> <p>21 A. Yes, I'm sure it is.</p> <p>22 Q. Now, if we go to the next</p> <p>23 paragraph, the third paragraph, it says,</p> <p>24 "After having contacted equipment companies,</p> <p>25 egg producers and others, Tom completed his</p>	<p style="text-align: right;">808</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. You can put that aside.</p> <p>3 A. I think you understand by what</p> <p>4 we're doing here at this time, don't you? Do</p> <p>5 I need to explain what --</p> <p>6 Q. No, no.</p> <p>7 A. -- why it was delivered to</p> <p>8 Congress?</p> <p>9 Q. It's all good.</p> <p>10 What is UEP's relationship with</p> <p>11 Urner Barry?</p> <p>12 A. There is no relationship.</p> <p>13 Urner Barry is the market reporter for eggs</p> <p>14 and some other commodities. And they --</p> <p>15 they're the only market reporter for eggs.</p> <p>16 Q. They're the only market</p> <p>17 reporter for eggs?</p> <p>18 A. Right.</p> <p>19 Q. They report on a nationwide</p> <p>20 basis?</p> <p>21 A. Yes.</p> <p>22 Q. If I could just tender now as</p> <p>23 another exhibit.</p> <p>24 - - -</p> <p>25 (Exhibit Gregory-98, Shell Egg</p>
<p style="text-align: right;">807</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 report and just this week we received a final</p> <p>3 copy."</p> <p>4 Now, did Tom Earley complete</p> <p>5 that report?</p> <p>6 A. This here?</p> <p>7 Q. Yes. The Agralytica report.</p> <p>8 A. Yes.</p> <p>9 Q. Did Tom Earley produce the</p> <p>10 ProMar report?</p> <p>11 A. Yes.</p> <p>12 Q. Now, the last sentence of that</p> <p>13 paragraph says, "The attached report was</p> <p>14 released yesterday to Congressional</p> <p>15 officers."</p> <p>16 A. Yes.</p> <p>17 Q. Was that sent to congressmen?</p> <p>18 A. It was delivered at least to</p> <p>19 members of Congress, yes.</p> <p>20 Q. Did the UEP pay for that</p> <p>21 report?</p> <p>22 A. I'm sure we did. I don't know.</p> <p>23 MS. LEVINE: Mr. Gregory, you</p> <p>24 should only testify to what you know.</p> <p>25 BY MR. SLIDDERS:</p>	<p style="text-align: right;">809</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Marketing Committee October 11, 2006</p> <p>3 San Antonio, TX marketing material,</p> <p>4 Bates UE0210026 - UE0210047, was</p> <p>5 marked for identification.)</p> <p>6 - - -</p> <p>7 MR. SLIDDERS: Exhibit 98.</p> <p>8 BY MR. SLIDDERS:</p> <p>9 Q. Can you identify that document?</p> <p>10 A. It is --</p> <p>11 MS. ANDERSON: Read the Bates</p> <p>12 range.</p> <p>13 MR. SLIDDERS: UE0210026 to</p> <p>14 UE0210047.</p> <p>15 THE WITNESS: It is the meeting</p> <p>16 materials for a Shell Egg Marketing</p> <p>17 Committee October 2006.</p> <p>18 BY MR. SLIDDERS:</p> <p>19 Q. Did you put this package</p> <p>20 together?</p> <p>21 A. I'm sure I did.</p> <p>22 Q. If we could turn to page 11,</p> <p>23 page 11 of the document. I think it's</p> <p>24 actually on the top of the document, the page</p> <p>25 number for some reason.</p>

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<p style="text-align: right;">810</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Do you see the heading of that</p> <p>4 page says, "Retail Feature Price For Cage and</p> <p>5 Non-Cage Eggs"?</p> <p>6 A. Yes.</p> <p>7 Q. Then under it, it says,</p> <p>8 USDA-AMS gathers information from 17,000</p> <p>9 retailers nationwide. The prices shown below</p> <p>10 are the advertised prices for shell eggs to</p> <p>11 consumers at major retail supermarkets --</p> <p>12 major retail supermarket outlets. Do you see</p> <p>13 that?</p> <p>14 A. Yes.</p> <p>15 Q. Now, do you put this -- this</p> <p>16 would be used -- and this information would</p> <p>17 be used by the Shell Egg Marketing Committee?</p> <p>18 A. I put this together as a -- for</p> <p>19 information for the Shell Egg Marketing</p> <p>20 Committee.</p> <p>21 Q. Earlier today I think you</p> <p>22 testified that Don Bell tracked retail</p> <p>23 prices.</p> <p>24 A. Yes.</p> <p>25 Q. Is this the sort of -- if we go</p>	<p style="text-align: right;">812</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 dated September 26, 2005, with Bates number</p> <p>3 UE0212411. Did I have that wrong? No.</p> <p>4 MS. LEVINE: Which number is it?</p> <p>5 MR. SLIDDERS: Exhibit 99.</p> <p>6 - - -</p> <p>7 (Exhibit Gregory-99, 9/26/05</p> <p>8 Letter, Bates UE0212411 - UE0212413,</p> <p>9 was marked for identification.)</p> <p>10 - - -</p> <p>11 THE WITNESS: You did not give</p> <p>12 me a copy.</p> <p>13 MS. LEVINE: We're going to quiz</p> <p>14 you.</p> <p>15 THE WITNESS: Do you need this?</p> <p>16 BY MR. SLIDDERS:</p> <p>17 Q. Can you identify this letter?</p> <p>18 A. Yes. I wrote the letter.</p> <p>19 Q. Did you send it to Mr. Gary</p> <p>20 Stoller of Stoller Farms?</p> <p>21 A. Yes. Yes.</p> <p>22 Q. Put that aside now.</p> <p>23 This is going to be the easy</p> <p>24 part.</p> <p>25 - - -</p>
<p style="text-align: right;">811</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 back to this report, I believe that the</p> <p>3 information in this report is from the USDA?</p> <p>4 A. Yes. How I gather this, right</p> <p>5 on USDA-AMS's Web site, they weekly report on</p> <p>6 all regions of the country X number of</p> <p>7 stores, I can't remember what it is, of what</p> <p>8 the price of all categories of eggs are.</p> <p>9 Now, where Don Bell got his retail egg prices</p> <p>10 at, I don't know.</p> <p>11 Q. But he did report on retail egg</p> <p>12 prices to UEP?</p> <p>13 A. Yes, he did.</p> <p>14 MS. LEVINE: Object to the form</p> <p>15 of the question.</p> <p>16 THE WITNESS: Right. But I</p> <p>17 think -- I think he's only -- probably</p> <p>18 in that case I think he's only</p> <p>19 tracking one category of eggs. I</p> <p>20 don't know.</p> <p>21 We're done with this one?</p> <p>22 BY MR. SLIDDERS:</p> <p>23 Q. Yes, sorry. We're done with</p> <p>24 that one.</p> <p>25 If I could pass you a letter</p>	<p style="text-align: right;">813</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 (Exhibit Gregory-100, 3/19/08</p> <p>3 Letter, Bates NL003516 & NL003517, was</p> <p>4 marked for identification.)</p> <p>5 - - -</p> <p>6 BY MR. SLIDDERS:</p> <p>7 Q. I'm going to pass you</p> <p>8 Exhibit 100, which is a -- entitled -- it's a</p> <p>9 March 19, 2008, letter with Bates number</p> <p>10 NL003516 to 3517.</p> <p>11 A. I recognize it.</p> <p>12 Q. Did you write it?</p> <p>13 A. My signature is on it, so, yes.</p> <p>14 Q. It was sent to all UEP members?</p> <p>15 A. Yes.</p> <p>16 Q. It was sent to all UEP members</p> <p>17 in the course of your duties as a UEP</p> <p>18 president?</p> <p>19 A. It would have been.</p> <p>20 Q. And the date of the letter is</p> <p>21 March 19, 2008?</p> <p>22 A. Yes.</p> <p>23 Q. Thank you. Put that aside.</p> <p>24 A. I feel like I'm missing</p> <p>25 something here.</p>

43 (Pages 810 to 813)

<p style="text-align: right;">814</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Because you're not</p> <p>3 a lawyer.</p> <p>4 MR. SLIDDERS: Lucky you.</p> <p>5 MS. LEVINE: Sometimes lawyers</p> <p>6 ask question just for the record so</p> <p>7 that they can confirm who wrote the</p> <p>8 letter and the date.</p> <p>9 THE WITNESS: That brings up</p> <p>10 my -- there's two things that we have</p> <p>11 too many -- too much of. One is</p> <p>12 potholes and the other is attorneys.</p> <p>13 - - -</p> <p>14 (Exhibit Gregory-101, 2/6/07</p> <p>15 E-mail, Bates MF10004431 - MF10004433,</p> <p>16 was marked for identification.)</p> <p>17 - - -</p> <p>18 BY MR. SLIDDERS:</p> <p>19 Q. This is Exhibit 101. It's</p> <p>20 Bates stamped MF10004431.</p> <p>21 Do you recognize this e-mail?</p> <p>22 Feel free to look through it. Sorry.</p> <p>23 A. Yes, I have had e-mails from</p> <p>24 Dr. Roland, so I would need to scan it to</p> <p>25 know the details.</p>	<p style="text-align: right;">816</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 identification.)</p> <p>3 - - -</p> <p>4 BY MR. SLIDDERS:</p> <p>5 Q. Let me just tender Exhibit 102.</p> <p>6 A chain of e-mails, which is a chain of</p> <p>7 e-mails with Bates number RWS 000011241.</p> <p>8 Can you identify this document?</p> <p>9 A. It looks to me like it's a flow</p> <p>10 of e-mails. But, I guess, I'm going to have</p> <p>11 to read some of it to recall what it was.</p> <p>12 Q. That's okay, but you did</p> <p>13 receive this e-mail?</p> <p>14 A. Yes, it appears I did.</p> <p>15 Q. And you received this e-mail in</p> <p>16 the course of being vice president of UEP?</p> <p>17 A. At that time I would have been</p> <p>18 the vice president, yes.</p> <p>19 Q. And you would have received</p> <p>20 that on March 15, 2006?</p> <p>21 A. Yes.</p> <p>22 Q. Thank you. Put that aside.</p> <p>23 MS. LEVINE: He's much quicker.</p> <p>24 THE WITNESS: No, no. It's just</p> <p>25 scaring me, I think one of these days</p>
<p style="text-align: right;">815</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Please, take your time.</p> <p>3 A. (Reviewing document.)</p> <p>4 Q. You received this e-mail on</p> <p>5 February 6, 2007?</p> <p>6 A. This is coming from a Dr.</p> <p>7 Roland at his -- really come up with an idea</p> <p>8 about how you could manage supply through</p> <p>9 some sort of feeding type program. But I</p> <p>10 never understood very well then, I never --</p> <p>11 still don't understand it. And we never</p> <p>12 adopted any of -- UEP never adopted any of</p> <p>13 it. I have my questions whether egg</p> <p>14 producers did, either.</p> <p>15 Q. But you received this e-mail?</p> <p>16 A. It shows that I did, yes.</p> <p>17 Q. You received this in your role</p> <p>18 as president or vice president at that time</p> <p>19 of UEP?</p> <p>20 A. Yes.</p> <p>21 Q. You can put that aside.</p> <p>22 - - -</p> <p>23 (Exhibit Gregory-102, E-mail</p> <p>24 chain, Bates RWS 000011241 &</p> <p>25 RWS 000011242, was marked for</p>	<p style="text-align: right;">817</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 that I'm going to find myself in</p> <p>3 court, he says, well, you know, I</p> <p>4 showed you this.</p> <p>5 BY MR. SLIDDERS:</p> <p>6 Q. Could I just give you one more</p> <p>7 exhibit.</p> <p>8 - - -</p> <p>9 (Exhibit Gregory-103, Animal</p> <p>10 Welfare Report for 2003 Area Meetings,</p> <p>11 Bates MF10024405 - MF10024422, was</p> <p>12 marked for identification.)</p> <p>13 - - -</p> <p>14 BY MR. SLIDDERS:</p> <p>15 Q. This is document number</p> <p>16 MF10024405 to MF10024422.</p> <p>17 Can you identify this document?</p> <p>18 A. Yes.</p> <p>19 Q. What is it?</p> <p>20 A. It's a report on animal welfare</p> <p>21 given at UEP area meetings in 2003.</p> <p>22 Q. Did you prepare this report?</p> <p>23 A. I'm sure that I did.</p> <p>24 Q. You prepared this report as</p> <p>25 vice president of UEP?</p>

44 (Pages 814 to 817)

818	820
<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. You can put that aside,</p> <p>4 Mr. Gregory.</p> <p>5 A. I'm feeling very nervous</p> <p>6 when --</p> <p>7 Q. Don't be nervous, Mr. Gregory.</p> <p>8 MS. LEVINE: Counsel is really</p> <p>9 doing this for evidentiary purposes.</p> <p>10 - - -</p> <p>11 (Exhibit Gregory-104, E-mail</p> <p>12 chain, Bates NL00327492 & NL00327493,</p> <p>13 was marked for identification.)</p> <p>14 - - -</p> <p>15 BY MR. SLIDDERS:</p> <p>16 Q. Just if I could give you</p> <p>17 another exhibit, Mr. Gregory. Exhibit 104.</p> <p>18 It is a chain of e-mails with a Bates stamp</p> <p>19 NL00327492 to 493.</p> <p>20 Can you identify this e-mail,</p> <p>21 Mr. Gregory?</p> <p>22 A. Yes.</p> <p>23 Q. You received this -- you</p> <p>24 drafted the first one and sent it on June 24,</p> <p>25 2008?</p>	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 VIDEOGRAPHER: The time is</p> <p>3 approximately 11:30 a.m. We are off</p> <p>4 the record.</p> <p>5 - - -</p> <p>6 (A recess was taken.)</p> <p>7 - - -</p> <p>8 VIDEOGRAPHER: The time is</p> <p>9 approximately 12:10 p.m. This begins</p> <p>10 tape four, volume three. We are back</p> <p>11 on the record.</p> <p>12 - - -</p> <p>13 EXAMINATION</p> <p>14 - - -</p> <p>15 BY MS. LEVINE:</p> <p>16 Q. Good afternoon, Mr. Gregory.</p> <p>17 A. Good afternoon.</p> <p>18 Q. As you know, my name is Jan</p> <p>19 Levine, and I represent UEP and USEM in these</p> <p>20 lawsuits.</p> <p>21 A. Yes.</p> <p>22 Q. I think we all appreciate your</p> <p>23 stamina and for staying with us over three</p> <p>24 days. We know it's not an easy thing, and</p> <p>25 that you are answering the questions in the</p>
819	821
<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And you received that</p> <p>4 subsequent e-mail by Larry Seger later that</p> <p>5 day?</p> <p>6 A. Yes.</p> <p>7 Q. And you both drafted the e-mail</p> <p>8 and received the e-mail in the course of your</p> <p>9 role as president of the UEP?</p> <p>10 A. Yes.</p> <p>11 Q. You can put that aside.</p> <p>12 MR. SLIDDERS: Mr. Gregory, I</p> <p>13 have no further questions subject to</p> <p>14 reserving my right to redirect later.</p> <p>15 MS. LEVINE: Any other --</p> <p>16 MS. CAIN-MANNIX: We'll reserve</p> <p>17 the rest of our time for rebuttal.</p> <p>18 MS. LEVINE: Can we get a</p> <p>19 reading on the time so we know how</p> <p>20 much time --</p> <p>21 MR. OLSON: 40 minutes</p> <p>22 remaining.</p> <p>23 MS. LEVINE: 40 minutes</p> <p>24 remaining?</p> <p>25 THE WITNESS: 40?</p>	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 best way you can recall the facts. It's now</p> <p>3 your turn. I know you've been waiting a long</p> <p>4 time, so I'm going to ask you some questions.</p> <p>5 A. My mind is so cluttered, I</p> <p>6 don't know whether I'm up or down.</p> <p>7 Q. You can take a break whenever</p> <p>8 you want, Mr. Gregory.</p> <p>9 A. I'm fine.</p> <p>10 Q. You can have a sip of water.</p> <p>11 A. I'm fine. Let's go.</p> <p>12 Q. You agreed with Mr. Olson</p> <p>13 during his examination that the problem with</p> <p>14 having a surplus or an over supply of eggs is</p> <p>15 that it drives the price of eggs down. How</p> <p>16 low can it drive the price of eggs down?</p> <p>17 A. I guess that's speculating. I</p> <p>18 don't know how low that is.</p> <p>19 Q. Could it be below the cost of</p> <p>20 production?</p> <p>21 MR. OLSON: Objection to form.</p> <p>22 THE WITNESS: Yes, it often is</p> <p>23 below the cost of production.</p> <p>24 BY MS. LEVINE:</p> <p>25 Q. And have you observed that in</p>

45 (Pages 818 to 821)

<p style="text-align: right;">822</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 your time in the egg industry?</p> <p>3 A. Many times.</p> <p>4 Q. And what happens when there is</p> <p>5 a surplus and the prices go below cost as you</p> <p>6 just described in your personal experience?</p> <p>7 MR. OLSON: Objection to form.</p> <p>8 THE WITNESS: There is very few</p> <p>9 alternatives. In the shell egg</p> <p>10 industry, we used to be able to sell</p> <p>11 some of that surplus to the egg</p> <p>12 breaking companies, but as they built</p> <p>13 their own facilities for production,</p> <p>14 that market dwindled considerably. So</p> <p>15 then we're left with either reducing</p> <p>16 the flock size or we're interested in</p> <p>17 inquiries for exports.</p> <p>18 BY MS. LEVINE:</p> <p>19 Q. And export is just another</p> <p>20 market for surplus eggs. Is that correct?</p> <p>21 MR. OLSON: Objection to form.</p> <p>22 THE WITNESS: That's right, yes.</p> <p>23 BY MS. LEVINE:</p> <p>24 Q. And in those instances where</p> <p>25 egg farmers are forced into a below cost</p>	<p style="text-align: right;">824</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 you were talking about, were they voluntary?</p> <p>3 A. They always were.</p> <p>4 Q. Were producers required to</p> <p>5 follow the recommendations?</p> <p>6 MR. OLSON: Objection as to</p> <p>7 form.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MS. LEVINE:</p> <p>10 Q. Was a producer ever penalized</p> <p>11 for not following a supply recommendation?</p> <p>12 MR. OLSON: Objection to form.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. You can answer.</p> <p>15 A. No.</p> <p>16 Q. Was any producer ever</p> <p>17 prohibited from increasing its flock or its</p> <p>18 production?</p> <p>19 A. No.</p> <p>20 Q. Did UEP follow up to make sure</p> <p>21 that the producers follow any recommendation?</p> <p>22 A. No.</p> <p>23 Q. I want to show you -- take a</p> <p>24 look at Gregory-25. Do you remember when Mr.</p> <p>25 Olson showed you this document?</p>
<p style="text-align: right;">823</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 situation and farmers go out of business,</p> <p>3 does that create a shortage of eggs?</p> <p>4 MR. OLSON: Objection to form.</p> <p>5 THE WITNESS: Eventually it</p> <p>6 will, yes.</p> <p>7 BY MS. LEVINE:</p> <p>8 Q. And in those circumstances,</p> <p>9 would consumers suffer?</p> <p>10 A. Not at all.</p> <p>11 Q. If there was a shortage of</p> <p>12 eggs, would consumers suffer?</p> <p>13 MR. OLSON: Objection to form.</p> <p>14 THE WITNESS: In my lifetime of</p> <p>15 50-some years in the egg industry, I</p> <p>16 never know a time when there wasn't</p> <p>17 enough eggs to fill the consumer</p> <p>18 market.</p> <p>19 BY MS. LEVINE:</p> <p>20 Q. What food item is one of the</p> <p>21 lowest priced and highest in protein?</p> <p>22 MR. OLSON: Objection to form.</p> <p>23 THE WITNESS: Eggs.</p> <p>24 BY MS. LEVINE:</p> <p>25 Q. On these recommendations that</p>	<p style="text-align: right;">825</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. I know that he showed me this</p> <p>3 document.</p> <p>4 Q. Take a look at the last page,</p> <p>5 Mr. Gregory. It's titled, "FINANCIAL IMPACT</p> <p>6 OF ACTIONS TAKEN BY UEP/USEM TO ADDRESS</p> <p>7 INDUSTRY ECONOMICS."</p> <p>8 Do you see that page?</p> <p>9 A. Yes, I do.</p> <p>10 Q. And there's some discussion</p> <p>11 about what was the impact of these actions?</p> <p>12 A. Yes.</p> <p>13 Q. What, if anything, did you do</p> <p>14 when you wrote this document to determine</p> <p>15 that the marketing committee's and price</p> <p>16 discovery committee's recommendation caused</p> <p>17 an increase in the Urner Barry quote?</p> <p>18 MR. OLSON: Objection to form.</p> <p>19 THE WITNESS: I'm simply using</p> <p>20 the market quote issued by Urner Barry</p> <p>21 and making comparisons to that.</p> <p>22 BY MS. LEVINE:</p> <p>23 Q. Could other factors have been</p> <p>24 responsible for the increase in price?</p> <p>25 A. Yeah, there always is.</p>

46 (Pages 822 to 825)

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<p style="text-align: right;">826</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Lots of different factors.</p> <p>3 Right?</p> <p>4 A. Yes.</p> <p>5 MR. OLSON: Objection to form.</p> <p>6 BY MS. LEVINE:</p> <p>7 Q. None of which you considered in</p> <p>8 doing this document. Is that correct?</p> <p>9 MR. OLSON: Objection to form.</p> <p>10 THE WITNESS: That's correct.</p> <p>11 BY MS. LEVINE:</p> <p>12 Q. Did you do anything to</p> <p>13 determine if other factors were responsible?</p> <p>14 A. No.</p> <p>15 Q. What happened to the flock</p> <p>16 side -- strike that.</p> <p>17 What happened to the flock size</p> <p>18 nationwide between 1999 and 2008?</p> <p>19 MR. OLSON: Objection to form.</p> <p>20 THE WITNESS: I'm a little bit</p> <p>21 confused because he's objecting to</p> <p>22 every question.</p> <p>23 BY MS. LEVINE:</p> <p>24 Q. That's okay.</p> <p>25 A. And I'm not --</p>	<p style="text-align: right;">828</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 sir?</p> <p>3 A. No, they were not.</p> <p>4 Q. Were they disclosed to the</p> <p>5 government?</p> <p>6 A. Yes, they were.</p> <p>7 Q. Were they reported in the</p> <p>8 United Voices?</p> <p>9 A. Yes, they were.</p> <p>10 Q. Did you inform the USDA about</p> <p>11 the supply recommendations that were made</p> <p>12 from time to time?</p> <p>13 A. From time to time, but</p> <p>14 oftentimes there was a USDA person at the</p> <p>15 meetings as well.</p> <p>16 Q. At the meetings where the</p> <p>17 recommendations were actually made. Is that</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And did a USDA official or</p> <p>21 government official that attended those</p> <p>22 meetings ever complain to you about those</p> <p>23 recommendations?</p> <p>24 A. Not one time.</p> <p>25 Q. Anybody ever tell you it was an</p>
<p style="text-align: right;">827</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. He doesn't like my question.</p> <p>3 You just go ahead and answer to the best of</p> <p>4 your ability.</p> <p>5 A. They seem pretty</p> <p>6 straightforward questions, that why I'm</p> <p>7 having trouble. So will you ask a question?</p> <p>8 Q. I'm going to ask again. What</p> <p>9 happened to flock size nationwide between</p> <p>10 1999 and 2008?</p> <p>11 MR. OLSON: Same objection.</p> <p>12 THE WITNESS: It had its natural</p> <p>13 monthly inventory ups and downs, but</p> <p>14 in repairing -- comparing 1999 with</p> <p>15 2008, the 2008 flock was considerably</p> <p>16 larger than the 1999 flock.</p> <p>17 BY MS. LEVINE:</p> <p>18 Q. And what happened to egg</p> <p>19 production nationwide between 1999 and 2008?</p> <p>20 MR. OLSON: Same objection.</p> <p>21 THE WITNESS: It increased.</p> <p>22 BY MS. LEVINE:</p> <p>23 Q. These recommendations that Mr.</p> <p>24 Olson spent a lot of time talking about over</p> <p>25 the last two days, were they kept a secret,</p>	<p style="text-align: right;">829</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 antitrust violation?</p> <p>3 A. No.</p> <p>4 MR. OLSON: Objection to form.</p> <p>5 BY MS. LEVINE:</p> <p>6 Q. Anybody from the USDA or the</p> <p>7 government ever try to stop you?</p> <p>8 A. No.</p> <p>9 MR. OLSON: Objection to form.</p> <p>10 BY MS. LEVINE:</p> <p>11 Q. Anybody from the USDA or the</p> <p>12 government ever stand up and tell you that</p> <p>13 this was a violation of the law?</p> <p>14 A. No.</p> <p>15 Q. Did you rely on that fact in</p> <p>16 doing the supply recommendations that the</p> <p>17 government was in the room?</p> <p>18 A. Ask the question --</p> <p>19 Q. I'll rephrase it.</p> <p>20 A. Yeah.</p> <p>21 Q. Did it give you comfort that</p> <p>22 the government was in the room when you were</p> <p>23 handling UEP business?</p> <p>24 A. Yes.</p> <p>25 Q. I'm going to show you a</p>

47 (Pages 826 to 829)

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<p style="text-align: right;">830</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 document, and I'm going to mark it</p> <p>3 Gregory-105.</p> <p>4 - - -</p> <p>5 (Exhibit Gregory-105, 2/1/05</p> <p>6 Letter, Bates UE0145966 - UE0145969,</p> <p>7 was marked for identification.)</p> <p>8 - - -</p> <p>9 BY MS. LEVINE:</p> <p>10 Q. I'd like you to take a look at</p> <p>11 that document, Mr. Gregory.</p> <p>12 A. Yes.</p> <p>13 Q. Can you identify that document</p> <p>14 for us, please?</p> <p>15 A. Yes.</p> <p>16 Q. What is this document?</p> <p>17 MS. LEVIN: Could we have the</p> <p>18 Bates numbers?</p> <p>19 MR. OLSON: Could you wait for</p> <p>20 us to get the document before you</p> <p>21 start asking about it?</p> <p>22 MS. LEVINE: UE0145966 through</p> <p>23 UE0145 -- sorry, 145969.</p> <p>24 BY MS. LEVINE:</p> <p>25 Q. Take a look at that document,</p>	<p style="text-align: right;">832</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. I must be going to wrong way.</p> <p>3 Yeah. 66. Yes.</p> <p>4 Q. I'm going to direct your</p> <p>5 attention, Mr. Gregory, on your letter to the</p> <p>6 government which has been marked as 105,</p> <p>7 direct your attention to page 3 of that</p> <p>8 letter.</p> <p>9 MR. OLSON: Sorry, we're back on</p> <p>10 105 now?</p> <p>11 MS. LEVINE: Yes.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. Look at page 3 of that letter.</p> <p>15 A. Yes.</p> <p>16 Q. Do you see the paragraph</p> <p>17 beginning on "Based on information available</p> <p>18 at the economic summit..."?</p> <p>19 Do you see that, sir?</p> <p>20 A. Yes. Uh-huh.</p> <p>21 Q. Why don't you just read that</p> <p>22 paragraph to yourself for a minute.</p> <p>23 A. (Reviewing document.)</p> <p>24 Okay.</p> <p>25 Q. And can you take a look at</p>
<p style="text-align: right;">831</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Mr. Gregory.</p> <p>3 A. Okay, I've looked at it.</p> <p>4 Q. Can you identify that document?</p> <p>5 A. Yes.</p> <p>6 Q. What is it?</p> <p>7 A. It is a letter to Under</p> <p>8 Secretary William Hawks at USDA's marketing</p> <p>9 regulatory programs.</p> <p>10 Q. Did you draft this letter?</p> <p>11 A. Yes.</p> <p>12 Q. Can you read for the record who</p> <p>13 signed this letter?</p> <p>14 A. Roger Deffner, the UEP</p> <p>15 chairman; Wayne Mooney, the UEP marketing</p> <p>16 chairman; and myself as senior vice</p> <p>17 president.</p> <p>18 Q. Can you also take out</p> <p>19 Gregory-66 and put it right next to you?</p> <p>20 MR. OLSON: Are we done with</p> <p>21 105?</p> <p>22 MS. LEVINE: No.</p> <p>23 THE WITNESS: 66.</p> <p>24 BY MS. LEVINE:</p> <p>25 Q. At the bottom.</p>	<p style="text-align: right;">833</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Gregory-66 that's right next to you that you</p> <p>3 pulled out?</p> <p>4 A. Yes.</p> <p>5 Q. Which was the recommendations</p> <p>6 made --</p> <p>7 A. Yes.</p> <p>8 Q. -- at the economic summit that</p> <p>9 you spoke about --</p> <p>10 A. Yes.</p> <p>11 Q. -- during these two days of</p> <p>12 testimony?</p> <p>13 And can you compare those two,</p> <p>14 sir?</p> <p>15 A. I think they're the same.</p> <p>16 Q. So I just want to be clear that</p> <p>17 the recommendations that were discussed at</p> <p>18 the economic summit in 2004, and I think Mr.</p> <p>19 Olson spoke to you about some intention forms</p> <p>20 or some form, were explained fully by you in</p> <p>21 this letter to William Hawks, Under Secretary</p> <p>22 of Marketing and Regulatory Programs in</p> <p>23 Washington. Is that correct?</p> <p>24 MR. OLSON: Objection to form.</p> <p>25 THE WITNESS: That's correct.</p>

48 (Pages 830 to 833)

<p style="text-align: right;">834</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. LEVINE:</p> <p>3 Q. And did Mr. Hawks ever complain</p> <p>4 to you about those recommendations?</p> <p>5 A. No.</p> <p>6 Q. Did he ever say they violated</p> <p>7 the law?</p> <p>8 A. No.</p> <p>9 Q. Did he ever say that producers</p> <p>10 should not take such actions to reduce the</p> <p>11 flock during over supply periods?</p> <p>12 A. No.</p> <p>13 Q. Why did you include those</p> <p>14 details in this bonus buy request to Under</p> <p>15 Secretary Hawks?</p> <p>16 A. The purpose of the commodity</p> <p>17 purchase program is to purchase surplus</p> <p>18 agricultural products for the school lunch</p> <p>19 program, the needy food program, any other</p> <p>20 government assistance programs. So what most</p> <p>21 often they wanted to know was, have you first</p> <p>22 done things yourself to address the issue</p> <p>23 rather than just come to the government and</p> <p>24 ask them to bail you out.</p> <p>25 Q. The issue being what?</p>	<p style="text-align: right;">836</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. What was the purpose of you</p> <p>3 including these recommendations in your</p> <p>4 letter to Senator Hawks?</p> <p>5 MR. OLSON: Same objection.</p> <p>6 THE WITNESS: I wanted him to</p> <p>7 know that our Marketing Committee had</p> <p>8 made these recommendations as a point</p> <p>9 of reference that we were trying do</p> <p>10 something to address this over supply</p> <p>11 problem.</p> <p>12 BY MS. LEVINE:</p> <p>13 Q. And over your career and your</p> <p>14 time at UEP, have you written similar letters</p> <p>15 or advised the government before on the same</p> <p>16 types of issues?</p> <p>17 A. Yes.</p> <p>18 Q. And have you ever, in all of</p> <p>19 those times had any -- received any complaint</p> <p>20 from any government officials about those</p> <p>21 recommendations?</p> <p>22 A. No.</p> <p>23 Q. In your mind, were they</p> <p>24 encouraged?</p> <p>25 MR. OLSON: Objection to form.</p>
<p style="text-align: right;">835</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. The issue being that we had too</p> <p>3 many old hens, too many hens, and by this</p> <p>4 time the fowl processors that were once our</p> <p>5 marketers were not buying hens, not paying</p> <p>6 for them, we were actually having to pay to</p> <p>7 get rid of them and we were saying to Mr.</p> <p>8 Hawks, if you will do a bonus buy on fowl</p> <p>9 meat, that this would be something that these</p> <p>10 fowl processor we think would bid upon and</p> <p>11 then we would have a market for hens they</p> <p>12 were going to take from the egg farmer.</p> <p>13 Q. So before the government would</p> <p>14 increase the bonus buy, the producers were to</p> <p>15 take self help. Is that right?</p> <p>16 A. They wanted to see evidence</p> <p>17 that you had tried to take care of yourself</p> <p>18 first.</p> <p>19 Q. And that is why you included as</p> <p>20 proof of taking care of yourself that you</p> <p>21 included the recommendations from the 2004</p> <p>22 economic summit?</p> <p>23 MR. OLSON: Objection to form.</p> <p>24 THE WITNESS: Yes.</p> <p>25 BY MS. LEVINE:</p>	<p style="text-align: right;">837</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Strike that</p> <p>3 question.</p> <p>4 THE WITNESS: Are you done with</p> <p>5 that one?</p> <p>6 BY MS. LEVINE:</p> <p>7 Q. Yeah. Put it away.</p> <p>8 You testified just this</p> <p>9 morning -- you can put it at the end, then</p> <p>10 I'll ask you a question so you don't get them</p> <p>11 out of order.</p> <p>12 A. Right. Okay.</p> <p>13 Q. You testified just this morning</p> <p>14 that Don Bell shared market statistics with</p> <p>15 UEP. Remember that testimony?</p> <p>16 A. Yes.</p> <p>17 Q. Who else did Don Bell share</p> <p>18 market statistics with?</p> <p>19 A. I don't know. I mean, it</p> <p>20 just -- generally the egg industry, anyone</p> <p>21 that wanted his statistics, and I don't know</p> <p>22 the names necessarily of all the people.</p> <p>23 Q. Were they widely disseminated?</p> <p>24 A. Oh, yeah. Absolutely. Yes.</p> <p>25 Q. He was university based. Is</p>

49 (Pages 834 to 837)

<p style="text-align: right;">838</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Did the government ever rely on</p> <p>5 his statistics or use his statistics?</p> <p>6 MR. OLSON: Objection to form.</p> <p>7 THE WITNESS: That, I don't</p> <p>8 know.</p> <p>9 BY MS. LEVINE:</p> <p>10 Q. In turning to animal welfare</p> <p>11 issues, what was the purpose of UEP</p> <p>12 commissioning the Scientific Advisory</p> <p>13 Committee?</p> <p>14 A. I don't know what the series of</p> <p>15 events was, but we had watched in Europe</p> <p>16 where the European Union had passed</p> <p>17 legislation that was forcing a change in the</p> <p>18 housing systems in Europe. We didn't believe</p> <p>19 that was based upon science. It was driven</p> <p>20 by animal activists. But our interest was</p> <p>21 the fact that if we needed to make -- and we</p> <p>22 were fearful that's coming here. If we</p> <p>23 needed to make changes, then we should do it</p> <p>24 based upon what science told us that we</p> <p>25 needed to do rather than being pressured into</p>	<p style="text-align: right;">840</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. You want names?</p> <p>3 Q. Yes.</p> <p>4 A. Okay. If I can recall the</p> <p>5 names. Adele Douglass who was with the</p> <p>6 American Humane Association; Dr. Joy Mench,</p> <p>7 she was with University of California Davis;</p> <p>8 Dr. Janice Swanson who at that time was at</p> <p>9 Kansas State University; Dr. Ruth Newberry</p> <p>10 who at that time was with -- who is still</p> <p>11 with Washington State University; Dr.</p> <p>12 Patricia Hester who is at Purdue University.</p> <p>13 Initially he also had Margaret Shea-Moore who</p> <p>14 was with the USDA, and I don't know what</p> <p>15 division; Dr. Larry Stanker who was with the</p> <p>16 USDA, and I don't recall what division. But</p> <p>17 anyway, and I believe Bill Chase who was a</p> <p>18 veterinarian from Iowa; and Don Bell from the</p> <p>19 University of California.</p> <p>20 Years later, that committee</p> <p>21 changed, and some -- I know Margaret</p> <p>22 Shea-Moore and Larry Stanker, because of</p> <p>23 their careers with USDA, Margaret Shea-Moore</p> <p>24 had something with her husband moving or</p> <p>25 whatever it was, and Larry Stanker who had</p>
<p style="text-align: right;">839</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 it by animal activist campaigns. And they,</p> <p>3 the animal activists, were targeting our</p> <p>4 customers by doing all kinds of things. Just</p> <p>5 as an example Trader Joe's had received over</p> <p>6 30,000 e-mails in two days' time and it</p> <p>7 destroyed their e-mail systems. So they were</p> <p>8 using all kinds of boycott, or not boycott,</p> <p>9 but using all kinds of tactics to scare our</p> <p>10 customer.</p> <p>11 Q. How were the members of the</p> <p>12 Scientific Advisory Committee selected?</p> <p>13 A. We met with Dr. Jeff Armstrong</p> <p>14 who at that time was at Purdue University and</p> <p>15 we explained to him what our problem was. He</p> <p>16 was interested in animal welfare, not just</p> <p>17 egg layers, but animal welfare of all farm</p> <p>18 animals. We told him what our problem was</p> <p>19 and said we would like to look at something</p> <p>20 different, would he mind putting together a</p> <p>21 committee to look at our industry and come</p> <p>22 back to us and tell us if we -- changes</p> <p>23 needed to be made.</p> <p>24 Q. Who did Dr. Armstrong select to</p> <p>25 sit on the Scientific Advisory Committee?</p>	<p style="text-align: right;">841</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 been responsible for discussing food safety</p> <p>3 with us, moved out of the Texas A&M position</p> <p>4 he's in and so forth. Then we added -- Dr.</p> <p>5 Armstrong added; Dr. Gail Golab who was with</p> <p>6 the American Veterinary Medical Association;</p> <p>7 and Dr. Paul Thompson who is a -- anyway, Dr.</p> <p>8 Paul Thompson at Michigan State University.</p> <p>9 I'm sorry if I've missed somebody.</p> <p>10 Q. You know a lot better than I</p> <p>11 did, thank you, Mr. Gregory.</p> <p>12 Can you take a look at</p> <p>13 Exhibit 20?</p> <p>14 A. Yes.</p> <p>15 Q. I think over the past two days</p> <p>16 we've -- Mr. Olson asked you some questions</p> <p>17 about Gregory-20. Can you tell me what that</p> <p>18 document is?</p> <p>19 A. That is the -- at that time</p> <p>20 this is the completed recommendations that</p> <p>21 the Scientific Committee had presented, I</p> <p>22 think they presented it probably at our</p> <p>23 October org meeting, to UEP in 2000.</p> <p>24 Q. Can you take a look at page 2</p> <p>25 of that document, right after the cover page?</p>

50 (Pages 838 to 841)

<p style="text-align: right;">842</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Okay. Yes.</p> <p>3 Q. The second paragraph. It says</p> <p>4 in about the end of the second paragraph, UEP</p> <p>5 did provide one staff member and one producer</p> <p>6 as ex officio members of the committee.</p> <p>7 Do you see that, sir?</p> <p>8 A. Yes, I do.</p> <p>9 Q. And who is the staff member?</p> <p>10 A. That was me.</p> <p>11 Q. And what was your position,</p> <p>12 what was your title at that time at UEP?</p> <p>13 A. Senior vice president.</p> <p>14 Q. And a producer as ex officio</p> <p>15 members, who was the producer?</p> <p>16 A. Barrie Wilcox.</p> <p>17 Q. And what was his title at the</p> <p>18 time?</p> <p>19 A. I think at that -- we --</p> <p>20 Q. If you remember.</p> <p>21 A. You know, I don't know. At one</p> <p>22 time he was the Chairman of the Board,</p> <p>23 another time he was Chairman of Animal</p> <p>24 Welfare Committee. I don't know what his</p> <p>25 position at that time was.</p>	<p style="text-align: right;">844</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 our request was that they come back to</p> <p>3 UEP's board with recommendations that</p> <p>4 they felt was important for our</p> <p>5 industry.</p> <p>6 BY MS. LEVINE:</p> <p>7 Q. Do you think the Scientific</p> <p>8 Advisory members would have agreed to serve</p> <p>9 if the program was a pretext for reducing</p> <p>10 supply?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: Absolutely not.</p> <p>13 These are highly respected people and</p> <p>14 it would be an insult to them if they</p> <p>15 thought that. It would end their</p> <p>16 careers if it --</p> <p>17 BY MS. LEVINE:</p> <p>18 Q. What was the role of the</p> <p>19 Producer Committee for Animal Welfare?</p> <p>20 A. We recognized early on that</p> <p>21 just simply a set of scientific</p> <p>22 recommendations left as they were was okay.</p> <p>23 But it did not complete what was our goal.</p> <p>24 So the Producer Committee was formed to take</p> <p>25 the Scientific Committee recommendation and</p>
<p style="text-align: right;">843</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you know what ex officio</p> <p>3 means?</p> <p>4 A. It may mean something different</p> <p>5 than I think it is, but I apologize if I'm</p> <p>6 not right. I think of it as a nonvoting</p> <p>7 participant or member, whatever the word is.</p> <p>8 I don't know.</p> <p>9 Q. Did either you or Mr. Wilcox</p> <p>10 ever vote at the Scientific Committee?</p> <p>11 A. No, our role was to take and be</p> <p>12 a liaison between the Scientific Committee</p> <p>13 and UEP's committee and board.</p> <p>14 Q. What was the Scientific</p> <p>15 Advisory Committee's role?</p> <p>16 MR. OLSON: Objection to form.</p> <p>17 THE WITNESS: It was to review</p> <p>18 all the available literature, both</p> <p>19 here in this country and in Europe, on</p> <p>20 the poultry, the production practices</p> <p>21 of egg laying hens. And do whatever</p> <p>22 they want to do, they could visit</p> <p>23 producers, they could visit equipment</p> <p>24 manufacturers. There is no limit to</p> <p>25 what they could do. And ultimately</p>	<p style="text-align: right;">845</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 see if they could use those recommendations</p> <p>3 to create an industry program.</p> <p>4 Q. So was the Producer Committee</p> <p>5 to implement the guidelines?</p> <p>6 MR. OLSON: Objection to form.</p> <p>7 THE WITNESS: No. The Producer</p> <p>8 Committee was to try to draft a</p> <p>9 program out of that and ultimately get</p> <p>10 approval from the Board of Directors.</p> <p>11 BY MS. LEVINE:</p> <p>12 Q. Were all the members of the</p> <p>13 Producer Committee, the members, UEP members?</p> <p>14 A. Yes.</p> <p>15 Q. Did the Producer Committee have</p> <p>16 contributors?</p> <p>17 A. Yes. At different times. I</p> <p>18 know that Jason Wadsworth from Wegmans</p> <p>19 Grocery -- well, they owned about 600,000</p> <p>20 layers and they were a UEA producer/packer</p> <p>21 member, but Jason sat there as a vehicle by</p> <p>22 which we could gather information about what</p> <p>23 the retail market would accept and so forth.</p> <p>24 And at other times I know that Jason Whaley</p> <p>25 from Country Creek Farms who was the major</p>

51 (Pages 842 to 845)

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<p style="text-align: right;">846</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 conduit to Walmart sat in that same position.</p> <p>3 Q. Was it important for the</p> <p>4 Producer Committee to understand the needs of</p> <p>5 those two gentlemen, the contributors?</p> <p>6 A. Absolutely, because there,</p> <p>7 again, is absolutely no reason to develop a</p> <p>8 program if that program is not going to be</p> <p>9 accepted by the marketplace.</p> <p>10 Q. Could non-committee members</p> <p>11 bring motions before the Producer Committee?</p> <p>12 A. No.</p> <p>13 Q. And could non-UEP members vote</p> <p>14 at the Producer Committee?</p> <p>15 A. No, they could not. I forgot</p> <p>16 one person. Peter Clark who was on the</p> <p>17 Canadian Egg Market Agency's board and is now</p> <p>18 their chairman sat as a nonvoting member</p> <p>19 because of the fact that Canada and -- wanted</p> <p>20 to have somewhat similar guidelines as what</p> <p>21 the U.S. did have because of similar</p> <p>22 customers across country boundaries. So, I'm</p> <p>23 sorry, I missed him before.</p> <p>24 Q. Do you recall that you had a</p> <p>25 long discussion with Mr. Olson over the last</p>	<p style="text-align: right;">848</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Okay.</p> <p>3 Q. I'm going to mark this document</p> <p>4 as Gregory-106. It is UE0225056 to</p> <p>5 UE0225085.</p> <p>6 - - -</p> <p>7 (Exhibit Gregory-106, United Egg</p> <p>8 Producers Animal Husbandry Guidelines</p> <p>9 for U.S. Egg Laying Flocks, Bates</p> <p>10 UE0225056 - UE0225085, was marked for</p> <p>11 identification.)</p> <p>12 - - -</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. Mr. Gregory, are you familiar</p> <p>15 with this document?</p> <p>16 A. Yes, I am.</p> <p>17 Q. Can you turn to page 3 of the</p> <p>18 guidelines in front of you?</p> <p>19 A. Yes.</p> <p>20 Q. What is this document,</p> <p>21 Mr. Gregory?</p> <p>22 A. This is the Animal Husbandry</p> <p>23 Guidelines. This is the -- this is our</p> <p>24 Animal Welfare Program.</p> <p>25 Q. Can you look at page 3 of that</p>
<p style="text-align: right;">847</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 day or two about the Scientific Advisory</p> <p>3 Committee members' names being associated --</p> <p>4 A. Yes.</p> <p>5 Q. -- with the UEP certified</p> <p>6 program?</p> <p>7 A. Yes.</p> <p>8 Q. Do you remember that</p> <p>9 discussion?</p> <p>10 A. Uh-huh.</p> <p>11 Q. And you told him that the</p> <p>12 Scientific Advisory Committee members' names</p> <p>13 were put on the guidelines at some point, but</p> <p>14 he didn't show you that later document to</p> <p>15 establish that fact. Is that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. I'm going to mark the next</p> <p>18 document as the 2007 and 2008 Animal Welfare</p> <p>19 Guidelines.</p> <p>20 A. I'm getting mixed up as to what</p> <p>21 goes where.</p> <p>22 Q. You know what, there's so many</p> <p>23 documents you have there, Mr. Gregory, I'm</p> <p>24 going to mark a document so you can just move</p> <p>25 those over.</p>	<p style="text-align: right;">849</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 document?</p> <p>3 A. Right.</p> <p>4 Q. About the middle of the page,</p> <p>5 are these the members of the Scientific</p> <p>6 Advisory Committee?</p> <p>7 A. At that time, yes.</p> <p>8 Q. Did they ever object to be</p> <p>9 putting in this -- their names appearing on</p> <p>10 this document?</p> <p>11 A. This document here?</p> <p>12 Q. Yes.</p> <p>13 A. No. No.</p> <p>14 Everything is out of order</p> <p>15 again now.</p> <p>16 MR. OLSON: Don't worry about</p> <p>17 it.</p> <p>18 BY MS. LEVINE:</p> <p>19 Q. Mr. Gregory, put the guidelines</p> <p>20 back in front of you, I'm going to ask you</p> <p>21 another couple of questions. On page 3 --</p> <p>22 MR. OLSON: 106 still?</p> <p>23 MS. LEVINE: Yes.</p> <p>24 BY MS. LEVINE:</p> <p>25 Q. -- at the end of the third</p>

52 (Pages 846 to 849)

<p style="text-align: right;">850</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 paragraph, what do the guidelines say about</p> <p>3 the relationship between the Scientific</p> <p>4 Advisory Committee's recommendations and the</p> <p>5 guidelines themselves?</p> <p>6 A. That last paragraph there?</p> <p>7 Q. Yes.</p> <p>8 A. You want me to read it or just --</p> <p>9 Q. Yes, and your understanding.</p> <p>10 MR. OLSON: Objection to form.</p> <p>11 BY MS. LEVINE:</p> <p>12 Q. You can go ahead and read it.</p> <p>13 A. "The guidelines presented in</p> <p>14 this publication represent the</p> <p>15 recommendations of the Scientific Advisory</p> <p>16 Committee for best husbandry practices to</p> <p>17 assure the welfare of hens managed under cage</p> <p>18 and cage free conditions."</p> <p>19 Q. And is that your understanding?</p> <p>20 A. Yes.</p> <p>21 Q. Did UEP -- you can close that</p> <p>22 document. I'm going to come back to it, but</p> <p>23 I'm going to ask you another couple of</p> <p>24 questions.</p> <p>25 Did UEP work with others in</p>	<p style="text-align: right;">852</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 symposium type thing for Kroger, and I</p> <p>3 know Kroger has always been a</p> <p>4 supporter of the program.</p> <p>5 BY MS. LEVINE:</p> <p>6 Q. Did retailers support the UEP</p> <p>7 certified program?</p> <p>8 MR. OLSON: Objection to form.</p> <p>9 THE WITNESS: Yes. Otherwise</p> <p>10 the program would have never been a</p> <p>11 success.</p> <p>12 BY MS. LEVINE:</p> <p>13 Q. Can you take out Gregory-103</p> <p>14 that was just shown to you today by</p> <p>15 plaintiff's counsel? I think it's probably</p> <p>16 on -- going to be on the bottom.</p> <p>17 A. See I've got it all mixed up</p> <p>18 now. 103.</p> <p>19 Q. 103. Maybe the court reporter</p> <p>20 can help you out. I think the court reporter</p> <p>21 is going to help you out.</p> <p>22 A. Just that September 2000 --</p> <p>23 sorry about this. I got them all mixed up</p> <p>24 now. 103, yes.</p> <p>25 MR. OLSON: Sorry, could you</p>
<p style="text-align: right;">851</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 developing the UEP certified program?</p> <p>3 A. Yes.</p> <p>4 Q. And who were those other</p> <p>5 individuals or entities?</p> <p>6 A. Food and Marketing Institute,</p> <p>7 and -- who we refer to as FMI, and the</p> <p>8 National Council of Chain Restaurants who we</p> <p>9 refer to as NCCR.</p> <p>10 Q. How about the USDA and Validus?</p> <p>11 A. We needed to find a way in</p> <p>12 which to make sure that we had a credible</p> <p>13 program, and so we urged USDA originally to</p> <p>14 be an auditing firm. We felt it was</p> <p>15 important to have a government agency doing</p> <p>16 the auditing as well as an independent agency</p> <p>17 doing the auditing. So USDA and Validus then</p> <p>18 worked with us and became the auditing firms.</p> <p>19 Q. And did Kroger work with you?</p> <p>20 MR. OLSON: Objection to form.</p> <p>21 THE WITNESS: Kroger, I don't</p> <p>22 recall. I do know that there was at</p> <p>23 least one time that Kroger attended a</p> <p>24 meeting. I know at one time we held a</p> <p>25 special as farm tour and like</p>	<p style="text-align: right;">853</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 guys just hold on one second?</p> <p>3 BY MS. LEVINE:</p> <p>4 Q. I ask you to -- Gregory-103 was</p> <p>5 already identified this morning. Can you</p> <p>6 turn to the page stamped MF10024413?</p> <p>7 A. Yes.</p> <p>8 Q. Can you read to me what this</p> <p>9 page represents?</p> <p>10 MR. OLSON: Objection to form.</p> <p>11 THE WITNESS: It says, Retailers</p> <p>12 Which Are Supportive of UEP's Animal</p> <p>13 Welfare Guidelines.</p> <p>14 BY MS. LEVINE:</p> <p>15 Q. What did you understand that to</p> <p>16 mean?</p> <p>17 A. I don't know what the year of</p> <p>18 this was, but at any rate, we had been</p> <p>19 informed by egg suppliers, egg farmers, that</p> <p>20 these retailers were requiring UEP certified</p> <p>21 eggs and then the question was, were they</p> <p>22 also using the logo on their cartons.</p> <p>23 Q. And if there is a yes in that</p> <p>24 column, what does that mean?</p> <p>25 A. That meant that they were</p>

53 (Pages 850 to 853)

<p style="text-align: right;">854</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 requiring their egg suppliers to be UEP</p> <p>3 certified.</p> <p>4 Q. I want to ask you just about a</p> <p>5 couple of supplier retailers on this list.</p> <p>6 Albertsons?</p> <p>7 A. Yes.</p> <p>8 Q. Did Albertsons support the UEP</p> <p>9 Animal Welfare Guidelines?</p> <p>10 A. Yes. Yes.</p> <p>11 Q. Go down to Giant Food, please.</p> <p>12 A. Yes.</p> <p>13 Q. Did Giant Food support the UEP</p> <p>14 Animal Welfare Guidelines?</p> <p>15 A. Yes.</p> <p>16 Q. How about HEB?</p> <p>17 A. Yes.</p> <p>18 Q. Did they support the UEP Animal</p> <p>19 Welfare Guidelines?</p> <p>20 A. Yes.</p> <p>21 Q. How about Kroger, did Kroger</p> <p>22 support the UEP Animal Welfare Guidelines?</p> <p>23 A. Yes.</p> <p>24 Q. Price Shopper, did Price</p> <p>25 Shopper support the UEP Animal Welfare</p>	<p style="text-align: right;">856</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 for reducing supplies?</p> <p>3 MR. OLSON: Objection to form.</p> <p>4 THE WITNESS: I think to accuse</p> <p>5 people of that would be an insult.</p> <p>6 The answer is no.</p> <p>7 BY MS. LEVINE:</p> <p>8 Q. Now, for a producer to</p> <p>9 implement the guidelines for animal welfare,</p> <p>10 did the producer's cost increase at times?</p> <p>11 A. Yes.</p> <p>12 Q. And what effect did that have</p> <p>13 on price?</p> <p>14 MR. OLSON: Objection to form.</p> <p>15 THE WITNESS: I don't know,</p> <p>16 because we don't know whether the cost</p> <p>17 was ever able to be passed on.</p> <p>18 BY MS. LEVINE:</p> <p>19 Q. Would you take out, Mr. Gregory,</p> <p>20 Exhibit 35.</p> <p>21 A. I have it.</p> <p>22 Q. Can you turn to page 2 of</p> <p>23 Gregory-35.</p> <p>24 A. Yes.</p> <p>25 MR. OLSON: This is United</p>
<p style="text-align: right;">855</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Guidelines? Sorry, Price Chopper.</p> <p>3 A. Price Chopper indicates that</p> <p>4 we're not sure.</p> <p>5 Q. How about Publix?</p> <p>6 A. Yes.</p> <p>7 Q. They supported the UEP Animal</p> <p>8 Welfare Guidelines?</p> <p>9 A. Yes.</p> <p>10 Q. How about Winn-Dixie?</p> <p>11 A. Yes.</p> <p>12 Q. Did Winn-Dixie support the UEP</p> <p>13 Animal Welfare Guidelines?</p> <p>14 A. Yes.</p> <p>15 Q. What about McDonald's?</p> <p>16 MR. OLSON: Objection to form.</p> <p>17 THE WITNESS: McDonald's had</p> <p>18 their own program. They had taken</p> <p>19 much and most of all the science from</p> <p>20 UEP's Scientific Advisory Committee to</p> <p>21 develop their own program.</p> <p>22 BY MS. LEVINE:</p> <p>23 Q. Do you think all of these</p> <p>24 people and all of these entities would have</p> <p>25 been involved if the program was a pretext</p>	<p style="text-align: right;">857</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Voices. Right?</p> <p>3 THE WITNESS: Yes.</p> <p>4 MS. LEVINE: Yes, March 25,</p> <p>5 2002, United Voices.</p> <p>6 BY MS. LEVINE:</p> <p>7 Q. Why did UEP think it was</p> <p>8 important for producers to implement the</p> <p>9 guidelines even if their customers were not</p> <p>10 yet demanding the guidelines?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: In our view, we</p> <p>13 felt that it was important for our</p> <p>14 industry finally to have a program</p> <p>15 already in place that addressed animal</p> <p>16 welfare issues. And so when a</p> <p>17 customer was now being targeted by</p> <p>18 animal activists, they knew where to</p> <p>19 turn to for help and to, you know,</p> <p>20 change, you know, their specifications</p> <p>21 for buying.</p> <p>22 So it was not -- it was not</p> <p>23 necessarily done for the retailer, but</p> <p>24 we needed retailer support. We needed</p> <p>25 retailer's input into this. But we</p>

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<p style="text-align: right;">858</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 were going to go ahead even if some</p> <p>3 retailers were not ready for it.</p> <p>4 BY MS. LEVINE:</p> <p>5 Q. Was it a dynamic process to</p> <p>6 develop these guidelines?</p> <p>7 A. It was a series of many</p> <p>8 meetings and further refining the guidelines</p> <p>9 as new research came about or new things were</p> <p>10 learned, that needed to be implemented in</p> <p>11 order to manage as such the program. So,</p> <p>12 yes, it was a very dynamic thing, and it was</p> <p>13 watched by -- throughout the world. Our</p> <p>14 scientists became world known because of</p> <p>15 this.</p> <p>16 Q. And are you proud of the</p> <p>17 program, Mr. Gregory?</p> <p>18 A. Honestly in my 50-some years in</p> <p>19 the egg industry, I have never been more</p> <p>20 proud of anything than this.</p> <p>21 Q. Did developing of the program</p> <p>22 bring together all different sectors of the</p> <p>23 egg industry for this standard?</p> <p>24 A. Yes.</p> <p>25 Q. Can you look at Gregory-5?</p>	<p style="text-align: right;">860</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 and all those kind of things. I was</p> <p>3 arguing that the marketplace relied</p> <p>4 upon such, upon science-based</p> <p>5 programs.</p> <p>6 BY MS. LEVINE:</p> <p>7 Q. Did the guidelines -- you can</p> <p>8 put that document away, Mr. Gregory.</p> <p>9 Did the guidelines place any</p> <p>10 restrictions at all on the building of new</p> <p>11 houses?</p> <p>12 A. Absolutely not.</p> <p>13 Q. Was there any agreement among</p> <p>14 certified producers not to build new houses?</p> <p>15 A. Absolutely not.</p> <p>16 Q. Take a look at Gregory-42.</p> <p>17 A. I've got it.</p> <p>18 Q. Do you recall that Mr. Olson</p> <p>19 referenced your warning on the last page in</p> <p>20 regard to the building of new houses? The</p> <p>21 top of the last page.</p> <p>22 A. "Word Of Caution," is that the</p> <p>23 title?</p> <p>24 Q. Yes.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">859</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. That must be on the other end</p> <p>3 somewhere. Sorry about that. I got them all</p> <p>4 mixed up. Okay.</p> <p>5 Q. In Gregory-5, can you turn to</p> <p>6 the last page?</p> <p>7 A. Yes.</p> <p>8 Q. What did you mean by "The</p> <p>9 marketplace is the appropriate place to</p> <p>10 establish science-based standards that will</p> <p>11 allow consumers to make their own choices"?</p> <p>12 MR. OLSON: Objection to form.</p> <p>13 THE WITNESS: Well, if I can</p> <p>14 explain to you that at this hearing</p> <p>15 before the subcommittee of the</p> <p>16 Livestock Dairy and Poultry Committee,</p> <p>17 this was a hearing called in which I</p> <p>18 provided testimony, and sitting at the</p> <p>19 same table giving testimony was Wayne</p> <p>20 Pacelle, the president and CEO of the</p> <p>21 Humane Society of the United States.</p> <p>22 He and I had a difference of opinion</p> <p>23 about animal welfare and -- and his</p> <p>24 was a, more of it should be, you know,</p> <p>25 as such consumer demanding cage free</p>	<p style="text-align: right;">861</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And at that time you wanted to</p> <p>3 explain something, but at that time Mr. Olson</p> <p>4 wouldn't let you?</p> <p>5 A. Yes.</p> <p>6 MR. OLSON: Objection to form.</p> <p>7 BY MS. LEVINE:</p> <p>8 Q. What did you want to explain?</p> <p>9 A. Well, when this was laid out in</p> <p>10 a phase-in schedule, it was done so</p> <p>11 recognizing that in order to increase this</p> <p>12 space per bird in the house, you would lose</p> <p>13 some birds in those existing housing. We</p> <p>14 also knew that you were going to need to</p> <p>15 service your customers. And in order to do</p> <p>16 so, at some point in time you were going to</p> <p>17 need to build new housing to make up for</p> <p>18 this -- for these number of birds you lose in</p> <p>19 an individual house.</p> <p>20 So what I'm recognizing that I</p> <p>21 think here's what I'm saying, and I'm saying</p> <p>22 don't make a mistake to build new -- building</p> <p>23 new facilities too quickly. Try to manage</p> <p>24 this so that you're building it as need be</p> <p>25 type of thing.</p>

55 (Pages 858 to 861)

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<p style="text-align: right;">862</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you ever tell anyone not to</p> <p>3 build a new facility?</p> <p>4 A. No. No.</p> <p>5 Q. Did the guidelines require</p> <p>6 producers to reduce their flock size?</p> <p>7 A. The UEP certified program</p> <p>8 required them to increase the space per bird</p> <p>9 in cages. It did not require them to reduce</p> <p>10 their overall flock size.</p> <p>11 Q. Did the guidelines place any</p> <p>12 restrictions on any producer's flock size?</p> <p>13 A. No.</p> <p>14 Q. Did the guidelines require</p> <p>15 producers to reduce chick hatch?</p> <p>16 A. No.</p> <p>17 Q. Did the guidelines place any</p> <p>18 restriction on any producer's chick hatch?</p> <p>19 A. No.</p> <p>20 Q. What happened to flock size</p> <p>21 since the certified program began?</p> <p>22 MR. OLSON: Objection to form.</p> <p>23 THE WITNESS: It has increased</p> <p>24 considerably.</p> <p>25 BY MS. LEVINE:</p>	<p style="text-align: right;">864</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 page 3 of this document.</p> <p>3 A. Yes.</p> <p>4 Q. You answered, I think that</p> <p>5 what -- that what he analyzed there is</p> <p>6 probably true. What do you mean by that?</p> <p>7 A. Well, the industry -- see, when</p> <p>8 I was first in the industry, first several</p> <p>9 years, we measured our, not our success, but</p> <p>10 we measured things on a per bird basis, we</p> <p>11 were getting how many eggs per bird, what was</p> <p>12 our feed conversion per bird, what was our --</p> <p>13 you know, what was -- everything was measured</p> <p>14 on a per bird basis. And after the egg</p> <p>15 industry come along in 1960s and we're into</p> <p>16 this several years and so forth, we then</p> <p>17 begin to find egg producers, in my opinion,</p> <p>18 having very little regard for welfare or for</p> <p>19 the individual performance. What they were</p> <p>20 trying to do is maximize the revenue coming</p> <p>21 out of the entire house. And in some cases</p> <p>22 they were putting birds in cages as little --</p> <p>23 and providing them with as little as</p> <p>24 43 square inches. What this point is saying,</p> <p>25 that if the industry did nothing more, he</p>
<p style="text-align: right;">863</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Mr. Gregory, can you look at</p> <p>3 Gregory -- the document marked Gregory-11?</p> <p>4 A. Let's see if I'm going in the</p> <p>5 right direction. Nope. It's in that one.</p> <p>6 Yes, I have it.</p> <p>7 Q. I think you testified this</p> <p>8 morning -- can you look at the page 3 of that</p> <p>9 document?</p> <p>10 A. Yes.</p> <p>11 Q. I think you testified this</p> <p>12 morning that at one point in the industry</p> <p>13 producers were, I think you used the word</p> <p>14 cramming or shoving chickens into cages. Do</p> <p>15 you remember that?</p> <p>16 A. Yes.</p> <p>17 Q. In response to one of Mr.</p> <p>18 Olson's questions, he asked you about the</p> <p>19 point number 4 on this document. Do you see</p> <p>20 that --</p> <p>21 A. Yes.</p> <p>22 Q. -- about Don Bell?</p> <p>23 A. Yes.</p> <p>24 Q. Strike that question.</p> <p>25 He asked you about number 4 on</p>	<p style="text-align: right;">865</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 said it's estimated that 15 to 20 percent of</p> <p>3 the nation's houses are less than 48 square</p> <p>4 inches. If the industry does nothing more</p> <p>5 than go to 48 inches, it would remove</p> <p>6 millions of birds.</p> <p>7 Q. That is in regard to a cage --</p> <p>8 A. Yes.</p> <p>9 Q. -- a single cage. Is that</p> <p>10 correct?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: Yes, that is true.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. Now, throughout your testimony,</p> <p>15 you have been very careful when talking about</p> <p>16 reducing flocks to point out that you were</p> <p>17 talking about per cage. Isn't that right,</p> <p>18 sir?</p> <p>19 MR. OLSON: Objection to form.</p> <p>20 THE WITNESS: I'm talking about</p> <p>21 providing more space per bird within</p> <p>22 the individual cages.</p> <p>23 BY MS. LEVINE:</p> <p>24 Q. That has nothing to do with the</p> <p>25 number of cages, does it?</p>

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<p style="text-align: right;">866</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. No. No.</p> <p>3 Q. So taking the birds out of a</p> <p>4 cage is not related to the overall flock</p> <p>5 numbers. Is that correct?</p> <p>6 A. Not at all.</p> <p>7 Q. In fact, from the Animal</p> <p>8 Welfare Program itself, did producers learn</p> <p>9 that hens actually produce more eggs if there</p> <p>10 are less hens in a cage.</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: As the Scientific</p> <p>13 Committee told me as they were working</p> <p>14 on their recommendation and at times I</p> <p>15 would be trying to represent producers</p> <p>16 and challenge them on these things,</p> <p>17 and they told me at the time, said</p> <p>18 give this some time, what you will</p> <p>19 find as you do these things, you will</p> <p>20 get more eggs per hen, you will have</p> <p>21 lower mortality, et cetera. What we</p> <p>22 found very soon on, that the eggs per</p> <p>23 hen on an annual basis increased</p> <p>24 substantially, the livability improved</p> <p>25 so much it was beyond people's belief.</p>	<p style="text-align: right;">868</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 now.</p> <p>3 Q. I think it was in connection</p> <p>4 with the third point under C. Does that help</p> <p>5 refresh your recollection at all about what</p> <p>6 you wanted to say?</p> <p>7 A. I apologize, I don't recall.</p> <p>8 Q. I was just giving you an</p> <p>9 opportunity. If you think of it, you let me</p> <p>10 know.</p> <p>11 Mr. Gregory, can you take a</p> <p>12 look at Exhibit 46, it's your "An Economic</p> <p>13 Perspective By: Gene Gregory"?</p> <p>14 A. I do remember that. 46. Okay.</p> <p>15 Q. Do you have it in front of you?</p> <p>16 A. I do.</p> <p>17 Q. Can you turn to page 2?</p> <p>18 A. Yes.</p> <p>19 Q. At the bottom?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Do you see the sentence that</p> <p>22 says, "Now let's consider the reasons that</p> <p>23 may have caused these egg price improvements"?</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">867</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Feather cover of the birds was so much</p> <p>3 better and egg farmers that once</p> <p>4 resisted these kind of changes were</p> <p>5 patting them on the back and just</p> <p>6 tickled to death at what they had</p> <p>7 done.</p> <p>8 BY MS. LEVINE:</p> <p>9 Q. Mr. Gregory, can you look at</p> <p>10 the document that was marked as Gregory-23?</p> <p>11 A. 23. Going the wrong direction.</p> <p>12 21, 2. 23.</p> <p>13 Q. Could you turn to page 2 of</p> <p>14 Exhibit 23?</p> <p>15 A. Yes.</p> <p>16 Q. Do you see under the part where</p> <p>17 it says "C. Comments"?</p> <p>18 A. Yes.</p> <p>19 Q. Mr. Olson questioned you about</p> <p>20 this document. Do you remember?</p> <p>21 A. I do.</p> <p>22 Q. You wanted to explain something</p> <p>23 to him. What did you want to explain, if you</p> <p>24 remember?</p> <p>25 A. I'm sorry, I don't recall right</p>	<p style="text-align: right;">869</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. What, if anything, did you do</p> <p>3 when you wrote this to determine the -- to</p> <p>4 determine that the reasons actually caused</p> <p>5 the price improvements noted?</p> <p>6 MR. OLSON: Objection to form.</p> <p>7 THE WITNESS: So I need to turn</p> <p>8 the page and --</p> <p>9 BY MS. LEVINE:</p> <p>10 Q. Yeah.</p> <p>11 A. Okay.</p> <p>12 Q. I'm sorry. The reason --</p> <p>13 A. Yeah.</p> <p>14 Q. And really the question is,</p> <p>15 what did you do, if anything, to make these</p> <p>16 determinations?</p> <p>17 MR. OLSON: Same objection.</p> <p>18 THE WITNESS: Well, I was aware</p> <p>19 that the USDA had depopulated 3</p> <p>20 million birds in Southern California</p> <p>21 because of Egzota Newcastle disease</p> <p>22 problem. I knew that U.S. Egg</p> <p>23 Marketers had made some exports during</p> <p>24 those times. I knew that egg breaking</p> <p>25 plants at that point in time were</p>

57 (Pages 866 to 869)

<p style="text-align: right;">870</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 reducing their inventory of products</p> <p>3 and they were buy -- what I mean by</p> <p>4 that was they were buying product and</p> <p>5 because they were reducing their</p> <p>6 inventory or they would be buying.</p> <p>7 And at that point in time, I can't</p> <p>8 remember whether that was along about</p> <p>9 the Atkins Diet time, we saw an</p> <p>10 increase in per capita consumption of</p> <p>11 eggs. And then as we were beginning</p> <p>12 to phase in the Animal Welfare</p> <p>13 Guidelines, I anticipated that that</p> <p>14 was having a contribution. So it was</p> <p>15 just gathering information from</p> <p>16 different sources.</p> <p>17 BY MS. LEVINE:</p> <p>18 Q. Could other factors have been</p> <p>19 responsible for these price improvements?</p> <p>20 A. Absolutely. There always are.</p> <p>21 MR. OLSON: Objection to form.</p> <p>22 BY MS. LEVINE:</p> <p>23 Q. Did you do anything to</p> <p>24 determine if other factors were responsible?</p> <p>25 A. I did not.</p>	<p style="text-align: right;">872</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 a period of time passed for the farmer to</p> <p>3 have a need for or ability to build new</p> <p>4 housing.</p> <p>5 Q. And when in your guidelines</p> <p>6 there was a time when the farmer would have a</p> <p>7 need for new housing. Is that correct?</p> <p>8 MR. OLSON: Objection to form.</p> <p>9 THE WITNESS: Absolutely.</p> <p>10 Eventually he's got to build new</p> <p>11 housing.</p> <p>12 BY MS. LEVINE:</p> <p>13 Q. And he did, in fact, build new</p> <p>14 housing?</p> <p>15 MR. OLSON: Objection to form.</p> <p>16 THE WITNESS: He invested in the</p> <p>17 industry. I would not know the</p> <p>18 millions of dollars that has been</p> <p>19 invested in new housing.</p> <p>20 BY MS. LEVINE:</p> <p>21 Q. And when new housing was done,</p> <p>22 then the supply goes up. Right?</p> <p>23 A. In fact, it went way beyond</p> <p>24 what the need was.</p> <p>25 Q. And then the price went down.</p>
<p style="text-align: right;">871</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And in terms of the --</p> <p>3 implementing the welfare guidelines, can you</p> <p>4 explain what you meant by that at that period</p> <p>5 of time?</p> <p>6 A. What was the dating on this? I</p> <p>7 forget. This is 2003.</p> <p>8 MR. OLSON: Objection to form.</p> <p>9 BY MS. LEVINE:</p> <p>10 Q. Go ahead.</p> <p>11 A. We have now -- I don't know</p> <p>12 what the date of this -- it's October 2003,</p> <p>13 yeah. We had at this point in time lost the</p> <p>14 program with chicks hatched in April of 2002</p> <p>15 which meant that those chicks would be going</p> <p>16 to the layer house in the fall of 2002. So</p> <p>17 that was our first phase-in period. We were</p> <p>18 now at 56 inches and we had gone from what we</p> <p>19 talked about this morning as mostly</p> <p>20 53.3 inches at that time. So there had</p> <p>21 been -- in this short amount of time, there</p> <p>22 had been birds, the number of birds per cage,</p> <p>23 at least on some of the cages at that point</p> <p>24 in time had birds -- a bird or so had been</p> <p>25 taken out of some cage and it not been enough</p>	<p style="text-align: right;">873</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Is that right?</p> <p>3 A. Absolutely.</p> <p>4 Q. And is that one of the reasons</p> <p>5 that caused, I think you said one of the</p> <p>6 worst times in egg history?</p> <p>7 A. Yes.</p> <p>8 Q. Mr. Gregory, can you also look</p> <p>9 at page 1 of this document?</p> <p>10 A. Yes.</p> <p>11 Q. Look at the bottom couple of</p> <p>12 paragraphs about Dick Chilson. Do you see</p> <p>13 that, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Do you see in that paragraph</p> <p>16 that said, "So did the industry lose money</p> <p>17 during this four-...year period?"</p> <p>18 Do you see that paragraph?</p> <p>19 A. Yes. Yes.</p> <p>20 Q. The document says, "Dick</p> <p>21 Chilson provided figures showing that the</p> <p>22 average return for all his clients was about</p> <p>23 ½ cent per dozen profit per year."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>

58 (Pages 870 to 873)

<p style="text-align: right;">874</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you see the next sentence,</p> <p>3 he said that "...the Top Third of his clients</p> <p>4 were about 3 - 4 cents above this average and</p> <p>5 his Bottom Third averaged about 3 - 4 cents</p> <p>6 below the average."</p> <p>7 A. Yes.</p> <p>8 Q. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. So sometimes an average,</p> <p>11 sometimes there are profits and sometimes</p> <p>12 there are losses. Correct?</p> <p>13 MR. OLSON: Objection to form.</p> <p>14 THE WITNESS: Oh, yes.</p> <p>15 Absolutely.</p> <p>16 BY MS. LEVINE:</p> <p>17 Q. That's what an average is.</p> <p>18 Right?</p> <p>19 MR. OLSON: Objection to form.</p> <p>20 THE WITNESS: What this</p> <p>21 particular thing is talking about is</p> <p>22 that Dick Chilson had a service where</p> <p>23 he measured all kinds of parameters</p> <p>24 with his clients that he had, and then</p> <p>25 he would publish a report, not</p>	<p style="text-align: right;">876</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. There you're talking about</p> <p>4 averages, too, which is what you just said,</p> <p>5 some up, some down. Right?</p> <p>6 MR. OLSON: Objection to form.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MS. LEVINE:</p> <p>9 Q. So some prices is up for some</p> <p>10 purchasers and some went down for other</p> <p>11 purchaser. Is that right?</p> <p>12 MR. OLSON: Objection to form.</p> <p>13 THE WITNESS: What this is, is</p> <p>14 Urner Barry quote from those different</p> <p>15 categories of eggs. And, yes, some</p> <p>16 went up, some went down.</p> <p>17 BY MS. LEVINE:</p> <p>18 Q. And I think at the top of the</p> <p>19 document there is some discussion about cost</p> <p>20 plus contracts. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And when you were talking about</p> <p>23 Urner Barry just when you talked about the</p> <p>24 shell eggs, the breaking stock, the</p> <p>25 unpasteurized, you're just talking about</p>
<p style="text-align: right;">875</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 identify them by name, but he would</p> <p>3 publish a report of their performance.</p> <p>4 What we're trying to say here is that</p> <p>5 not everybody is the same. There are</p> <p>6 some farms and some companies that are</p> <p>7 more efficient or more profitable than</p> <p>8 others.</p> <p>9 BY MS. LEVINE:</p> <p>10 Q. Some profit's up, some profit's</p> <p>11 down. Right?</p> <p>12 MR. OLSON: Objection to form.</p> <p>13 THE WITNESS: Right.</p> <p>14 BY MS. LEVINE:</p> <p>15 Q. If you turn to page 2, please.</p> <p>16 I think you reviewed this document with Mr.</p> <p>17 Olson a little bit and you -- and in the</p> <p>18 middle it says, "Let's review the extent of</p> <p>19 the price turn around."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. You talk about Shell Eggs,</p> <p>23 Breaking Stock, Unpasteurized Whole,</p> <p>24 Pasteurized Whole, Dried Whole...</p> <p>25 Do you see that?</p>	<p style="text-align: right;">877</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Urner Barry effect, you're not talking about</p> <p>3 cost plus -- sorry, you're not talking about</p> <p>4 cost plus contracts?</p> <p>5 A. No. No. This is --</p> <p>6 Q. You're not -- go ahead.</p> <p>7 A. No, no. This does not have</p> <p>8 anything to do with cost plus contracts</p> <p>9 between egg supplier and his customer.</p> <p>10 Q. Or, for that matter, any other</p> <p>11 type of way that a producer would price his</p> <p>12 own eggs?</p> <p>13 A. In fact, at least in the shell</p> <p>14 egg industry, I know uses the Urner Barry</p> <p>15 benchmark quote as the point of negotiation</p> <p>16 and retailers have driven the egg producers</p> <p>17 down and down and down to a point instead of</p> <p>18 selling eggs at the Urner Barry quote, it's</p> <p>19 likely now that egg producers are having to</p> <p>20 sell their eggs to a retailer for probably --</p> <p>21 I've been out of the business now for --</p> <p>22 really paying attention to this, really ever</p> <p>23 since this lawsuit was filed, but at that</p> <p>24 time it was probably they were selling back</p> <p>25 of the Urner Barry quote by like 20 cents a</p>

59 (Pages 874 to 877)

<p style="text-align: right;">878</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 dozen. That comes about because the retailer</p> <p>3 keeps putting pressure on the egg supplier to</p> <p>4 sell them for less all the time because your</p> <p>5 competitor will.</p> <p>6 Q. When you testified this morning</p> <p>7 about the effect that retailers have on</p> <p>8 prices, you don't know that across the board.</p> <p>9 Right?</p> <p>10 MR. OLSON: Objection to form.</p> <p>11 THE WITNESS: Ask the question</p> <p>12 again, I'm sorry.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. This morning when you were</p> <p>15 asking -- you were testifying in answer to</p> <p>16 some questions about the effect that</p> <p>17 retailers had on prices, you don't know those</p> <p>18 effects across the board. Right?</p> <p>19 MR. OLSON: Objection to form.</p> <p>20 THE WITNESS: No. No.</p> <p>21 BY MS. LEVINE:</p> <p>22 Q. You don't know every retailer</p> <p>23 price?</p> <p>24 A. No, I have no idea.</p> <p>25 MR. OLSON: Same objection.</p>	<p style="text-align: right;">880</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 evidentiary point. He's just making his</p> <p>3 record.</p> <p>4 A. It gets real irritable.</p> <p>5 Q. I understand.</p> <p>6 MR. OLSON: Tell you what,</p> <p>7 should we have a standing objection to</p> <p>8 leading questions? Then I can object</p> <p>9 much less.</p> <p>10 MS. LEVINE: No, I think we have</p> <p>11 to keep to object to the form.</p> <p>12 THE WITNESS: I'm just trying to</p> <p>13 understand how this whole thing works.</p> <p>14 MR. OLSON: I just made an offer</p> <p>15 that would have made it a little</p> <p>16 simpler, but...</p> <p>17 BY MS. LEVINE:</p> <p>18 Q. What phase-in period did UEP</p> <p>19 initially want?</p> <p>20 A. We went to FMI discussing that</p> <p>21 we would like to get their endorsement and we</p> <p>22 would like to do this over a 12-year phase-in</p> <p>23 period.</p> <p>24 Q. And what phase-in period did</p> <p>25 the retailers want?</p>
<p style="text-align: right;">879</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: When I talk about</p> <p>3 retailers, we're talking about what is</p> <p>4 published by USDA.</p> <p>5 BY MS. LEVINE:</p> <p>6 Q. But you don't know anything in</p> <p>7 particular about any particular retailer?</p> <p>8 A. I have no idea about any</p> <p>9 contract between a supplier and a retailer.</p> <p>10 MR. OLSON: Same objection.</p> <p>11 BY MS. LEVINE:</p> <p>12 Q. Or the effect?</p> <p>13 A. No.</p> <p>14 MR. OLSON: Same objection.</p> <p>15 THE WITNESS: I'm sitting here</p> <p>16 and I'm wondering what -- I've never</p> <p>17 been through so, but I don't know that</p> <p>18 her questions are so offensive or</p> <p>19 anything. I don't understand all the</p> <p>20 objections.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. Mr. Gregory, it's just -- it's</p> <p>23 what lawyers do about a question. He thinks</p> <p>24 some of my proper questions as -- the way</p> <p>25 that I'm asking are improper from an</p>	<p style="text-align: right;">881</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. FMI, NCCR wanted to have it</p> <p>3 done very quickly. They suggested we do it</p> <p>4 over a three-year period.</p> <p>5 Q. What was ultimately</p> <p>6 implemented?</p> <p>7 A. We reached a compromise</p> <p>8 agreement and settled on six years.</p> <p>9 Q. Do you recall that on Tuesday</p> <p>10 you discussed with Mr. Olson the Scientific</p> <p>11 Advisory Committee's recommendation on space</p> <p>12 allowance?</p> <p>13 A. Yes.</p> <p>14 Q. Let's take a look at those</p> <p>15 recommendations. Can you take out again</p> <p>16 Gregory-20, which is September -- dated</p> <p>17 September 2000?</p> <p>18 A. That number is what again?</p> <p>19 Q. 20.</p> <p>20 A. 20. Okay.</p> <p>21 Q. At the same time I'm going to</p> <p>22 mark Gregory-107, which is Bates stamped</p> <p>23 UE0295925 through UE0295940.</p> <p>24 - - -</p> <p>25 (Exhibit Gregory-107, United Egg</p>

60 (Pages 878 to 881)

<p style="text-align: right;">882</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Producers Animal Husbandry Guidelines</p> <p>3 for U.S. Egg Laying Flocks, Bates</p> <p>4 UE0295925 - UE0295940, was marked for</p> <p>5 identification.)</p> <p>6 - - -</p> <p>7 BY MS. LEVINE:</p> <p>8 Q. I'm going to hand it to the</p> <p>9 witness. This is Gregory-107. There's a</p> <p>10 couple of documents that I'm going to have</p> <p>11 you look at all at once so there's no</p> <p>12 confusion.</p> <p>13 A. Okay.</p> <p>14 Q. Can you tell me what Gregory-20</p> <p>15 are?</p> <p>16 A. Those are the recommendations</p> <p>17 that the Scientific Committee presented to</p> <p>18 our Board of Directors in September of 2000.</p> <p>19 Q. Are those the final</p> <p>20 recommendations?</p> <p>21 A. There has been modifications or</p> <p>22 things that have come about since then based</p> <p>23 upon research that occurred after that, but</p> <p>24 at that time that was.</p> <p>25 Q. Can you turn to page Bates</p>	<p style="text-align: right;">884</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Can you look now at what we</p> <p>3 just marked as Gregory-107?</p> <p>4 A. Okay.</p> <p>5 Q. What is this document?</p> <p>6 A. That is the first edition of</p> <p>7 the Animal Husbandry Program.</p> <p>8 Q. This is the one that you</p> <p>9 referred to repeatedly when Mr. Olson showed</p> <p>10 you a draft that was written in 2000. Right?</p> <p>11 A. Yes.</p> <p>12 Q. And that draft is Exhibit 21.</p> <p>13 A. I don't have that. Do you want</p> <p>14 me to find it?</p> <p>15 Q. That's okay. Yeah, take out</p> <p>16 Exhibit 20 -- I'm sorry, Exhibit 21.</p> <p>17 A. 21. So which pile was I in</p> <p>18 here?</p> <p>19 MR. OLSON: While he finds that,</p> <p>20 can we take a 30-second break so I can</p> <p>21 do something?</p> <p>22 MS. LEVINE: 30 seconds?</p> <p>23 MR. OLSON: Use the restroom.</p> <p>24 MS. LEVINE: We're all going to</p> <p>25 stay here.</p>
<p style="text-align: right;">883</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 number UE0208693?</p> <p>3 A. I have it, yes.</p> <p>4 Q. Under "Housing Recommendations...,</p> <p>5 do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Are these the Scientific</p> <p>8 Advisory Committee's recommendation on</p> <p>9 housing and space allowance?</p> <p>10 A. Yes.</p> <p>11 Q. Can you read to me the third</p> <p>12 recommendation?</p> <p>13 A. "Space allowance should be in</p> <p>14 the range 67 to 86 square inches of usable</p> <p>15 space per bird, depending on the type of cage</p> <p>16 and the type of bird that is being housed.</p> <p>17 For example, space allowance can be at the</p> <p>18 low end of the range in shallow cages in</p> <p>19 which small Leghorn strains are housed, but</p> <p>20 should be at the higher end of the range in</p> <p>21 deep cages housing larger strains like brown</p> <p>22 hens. Useable space is space that is not</p> <p>23 obstructed by cage equipment, and has a</p> <p>24 ceiling height that is high enough for the</p> <p>25 hens to stand comfortably upright."</p>	<p style="text-align: right;">885</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Okay.</p> <p>3 VIDEOGRAPHER: The time is</p> <p>4 approximately 1:20 p.m. We're off the</p> <p>5 record.</p> <p>6 - - -</p> <p>7 (A recess was taken.)</p> <p>8 - - -</p> <p>9 VIDEOGRAPHER: The time is</p> <p>10 approximately 1:25 p.m. This begins</p> <p>11 tape five, volume three. We're back</p> <p>12 on the record.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. Mr. Gregory, do you have</p> <p>15 Exhibit 21?</p> <p>16 A. I do have.</p> <p>17 Q. And this is the document that</p> <p>18 Mr. Olson had asked you questions about.</p> <p>19 A. Okay.</p> <p>20 Q. Is this a draft?</p> <p>21 A. Yes.</p> <p>22 Q. And is Exhibit 107 the final</p> <p>23 guidelines?</p> <p>24 MR. OLSON: Objection to form.</p> <p>25 THE WITNESS: Excuse me. That</p>

61 (Pages 882 to 885)

<p style="text-align: right;">886</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 would have been the guidelines that</p> <p>3 were the final ones at that time that</p> <p>4 started the program.</p> <p>5 BY MS. LEVINE:</p> <p>6 Q. Can you turn to page 4 of that</p> <p>7 document, 107?</p> <p>8 A. Yes.</p> <p>9 Q. Look under "Recommendations."</p> <p>10 A. Yes.</p> <p>11 Q. Was the Scientific Advisory</p> <p>12 Committee's recommendation that space</p> <p>13 allowance should be in the range of 67 to</p> <p>14 86 inches included in the 2002 UEP</p> <p>15 guidelines?</p> <p>16 A. In the 2002? That's what we're</p> <p>17 looking at right now?</p> <p>18 Q. Yes.</p> <p>19 A. Yes.</p> <p>20 Q. And is that included?</p> <p>21 A. Yes.</p> <p>22 Q. Where is that included, could</p> <p>23 you just point that out to me?</p> <p>24 A. It's point number 3 under the</p> <p>25 "Recommendations."</p>	<p style="text-align: right;">888</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 the actual guidelines.</p> <p>3 A. Yes.</p> <p>4 Q. Look at page 4.</p> <p>5 A. Yes.</p> <p>6 Q. And was the Scientific Advisory</p> <p>7 Committee's recommendation that birds be</p> <p>8 allowed to stand comfortably adopted?</p> <p>9 MR. OLSON: Objection to form.</p> <p>10 THE WITNESS: It says that "All</p> <p>11 hens should be able to stand</p> <p>12 comfortably upright in their cage.</p> <p>13 The slope of the cage floor should not</p> <p>14 exceed 8 degrees."</p> <p>15 BY MS. LEVINE:</p> <p>16 Q. Thank you, Mr. Gregory.</p> <p>17 A. Can I further explain what I</p> <p>18 think is a positive thing here?</p> <p>19 Q. Sure.</p> <p>20 A. We talked a great deal about</p> <p>21 road map. The thing I'm most proud of about</p> <p>22 this is that the recommendations that the</p> <p>23 Scientific Committee made and they recognized</p> <p>24 that with existing equipment there were some</p> <p>25 things that you could not do. You can't</p>
<p style="text-align: right;">887</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Thank you. Let's take another</p> <p>3 look at recommendations by the Scientific</p> <p>4 Advisory Committee on housing and space that</p> <p>5 Mr. Olson asked you about. Look at Gregory-20.</p> <p>6 A. Page 20?</p> <p>7 Q. Look at the document 20 --</p> <p>8 A. No. The document 20.</p> <p>9 Q. -- the September --</p> <p>10 A. Yes, I have it.</p> <p>11 Q. -- 2000. You have that?</p> <p>12 A. Uh-huh.</p> <p>13 Q. And turn to UE0208693.</p> <p>14 A. I have that.</p> <p>15 Q. And, please, read the second</p> <p>16 recommendation.</p> <p>17 A. Hens should be able to stand</p> <p>18 comply upright in their cage without having</p> <p>19 their heads protruding into the cage above.</p> <p>20 A cage height of 16 to 17 inches will</p> <p>21 generally be acceptable for small Leghorn</p> <p>22 strains, while larger strains will require</p> <p>23 larger cages -- taller cages. The slope of</p> <p>24 the cage floor should not exceed 8 degrees.</p> <p>25 Q. Look at Exhibit 107 which are</p>	<p style="text-align: right;">889</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 change the size of the cage and so forth.</p> <p>3 What it was, it said to the equipment</p> <p>4 manufacturers in the egg industry, you need</p> <p>5 to start building different kinds of cages,</p> <p>6 and they did. Everything has been built in</p> <p>7 the -- I think virtually everything has been</p> <p>8 built since these guidelines came along has</p> <p>9 provided taller cages, it is most of the</p> <p>10 system that have been built are manure belt</p> <p>11 system where there is no drop through, you</p> <p>12 know, the air quality in the houses. It was</p> <p>13 a road map for the equipment companies to</p> <p>14 build a better cage system. And it's -- it</p> <p>15 is amazing what the systems are today versus</p> <p>16 what they were even in 2000.</p> <p>17 My point of saying that is that</p> <p>18 you -- it took time for this evolution.</p> <p>19 Q. Recall that another one of the</p> <p>20 Scientific Advisory Committee's</p> <p>21 recommendations you covered with Mr. Olson</p> <p>22 concerned fresh air and acceptable levels of</p> <p>23 ammonia concentration?</p> <p>24 A. Yes. Yes.</p> <p>25 Q. What is the maximum ammonia</p>

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<p style="text-align: right;">890</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 concentration allowed today under the UEP</p> <p>3 program?</p> <p>4 A. Let's see, I think it's -- I</p> <p>5 think it's --</p> <p>6 Q. I can show you a document.</p> <p>7 A. I was going to say, can I get</p> <p>8 it out of my briefcase?</p> <p>9 Q. Can you look at Gregory-106</p> <p>10 that I gave you? It is the 2007-2008.</p> <p>11 A. What did I do with that?</p> <p>12 Q. I can give you my document.</p> <p>13 A. I need to read it to be sure.</p> <p>14 Q. On 106 --</p> <p>15 A. You want me to read about</p> <p>16 temperature and air quality, the guidelines?</p> <p>17 Q. Can you look at --</p> <p>18 A. It says --</p> <p>19 Q. Can you look at UE0225077, and</p> <p>20 what does it tell you about the ammonia</p> <p>21 levels?</p> <p>22 A. The ammonia concentration to</p> <p>23 which birds are exposed should ideally be</p> <p>24 less than ten parts per million and should</p> <p>25 rarely exceed 25 parts per million.</p>	<p style="text-align: right;">892</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 down on the side of the OSHA for humans and</p> <p>3 the fact that we need to also be concerned</p> <p>4 about the workers within the house. And so</p> <p>5 that was one of their recommendations. We</p> <p>6 didn't think we could get to that as yet, but</p> <p>7 yet when we -- after presenting our</p> <p>8 guidelines to and asking the endorsement from</p> <p>9 the FMI and NCCR, this is one of the things</p> <p>10 that they found was deviated and they urged</p> <p>11 us to change that and ultimately, regardless</p> <p>12 of what the effect on northern climates were,</p> <p>13 we changed it to what the Scientific</p> <p>14 Committee wanted.</p> <p>15 Q. Thank you, Mr. Gregory.</p> <p>16 What is molting?</p> <p>17 A. Well, actually molting is a</p> <p>18 natural process that birds go through. It's</p> <p>19 a means of them in most cases shedding some</p> <p>20 feather, reducing body fat, getting</p> <p>21 themselves into a reproductive stage. Now,</p> <p>22 in the nature, in the wild, that means</p> <p>23 getting themselves in a reproductive stage so</p> <p>24 that they can hatch new chicklings. In our</p> <p>25 industry, molting will go -- hens will go</p>
<p style="text-align: right;">891</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Thank you, Mr. Gregory.</p> <p>3 Recall that you wanted to</p> <p>4 explain to Mr. Olson why the maximum ammonia</p> <p>5 concentration allowed initially under the UEP</p> <p>6 program was 50, but you did not have that</p> <p>7 opportunity. Do you want to explain it to me</p> <p>8 now?</p> <p>9 A. Yeah, there was a great debate</p> <p>10 amongst our Producer Committee about this</p> <p>11 issue. Because we had people in the northern</p> <p>12 states that were fearful that in the winter</p> <p>13 months when you have to button the house up</p> <p>14 much tighter because of cold temperatures,</p> <p>15 the ammonia level goes up in the house. They</p> <p>16 were arguing that if you take these birds out</p> <p>17 of their house, then the hens won't produce</p> <p>18 enough body heat in order to keep the house</p> <p>19 warm. They were arguing against this. And</p> <p>20 there were people that were arguing against</p> <p>21 this as well because they were referencing</p> <p>22 OSHA standards. And OSHA standards were one</p> <p>23 thing for like birds and they were different</p> <p>24 for humans.</p> <p>25 The Scientific Committee came</p>	<p style="text-align: right;">893</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 into a molt naturally, but not all on the</p> <p>3 same day or the same week or that kind of</p> <p>4 thing. And it's a very disruptive thing. So</p> <p>5 many years ago, sometime in the 1960s, at --</p> <p>6 what university, I don't know where that was,</p> <p>7 I think it was somewhere in California, they</p> <p>8 figured out that a way to synchronize a molt</p> <p>9 so that all hens were being molted at the</p> <p>10 same time.</p> <p>11 Now, the benefits of a molt, is</p> <p>12 by the time you do this, a hen is now in its</p> <p>13 older ages, it's not -- its rate of</p> <p>14 production is not good. But more than that,</p> <p>15 the problem is that as a hen ages, the shell</p> <p>16 quality, they're depleting calcium from their</p> <p>17 body to make an egg shell, and as they get</p> <p>18 older, the shell depleting and the -- as the</p> <p>19 egg size gets larger, the shell quality gets</p> <p>20 thinner. You have more cracks, more checks,</p> <p>21 that kind of thing. Well, consumers don't</p> <p>22 want to buy what we call then B grade eggs,</p> <p>23 so when you put a hen into molt, when she</p> <p>24 comes back into production, she is more like</p> <p>25 a young pullet now and she is now laying eggs</p>

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<p style="text-align: right;">894</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 that have a really nice shell on them.</p> <p>3 That's what the consumer wants.</p> <p>4 Q. When birds naturally molt, do</p> <p>5 they stop eating for a period of time?</p> <p>6 A. That's what I'm told. I'm not</p> <p>7 an expert on that, but, yes, they do stop</p> <p>8 eating. The purpose of that is to reduce</p> <p>9 themselves or do some things in order to</p> <p>10 rejuvenate that reproductive cycle.</p> <p>11 Incidentally, maybe people in</p> <p>12 here don't know, but you do not need roosters</p> <p>13 with hens to produce eggs. Now, it's</p> <p>14 surprising, but we've actually employed</p> <p>15 people that work for us and they didn't know</p> <p>16 that. But you do not need roosters to</p> <p>17 produce eggs. A hen will naturally lay eggs.</p> <p>18 The rooster is only necessary in order to</p> <p>19 fertilize that egg. And if you want to</p> <p>20 hatch -- hatch chicks, then you need roosters</p> <p>21 with them. But otherwise you do not need</p> <p>22 roosters.</p> <p>23 Q. Do you recall that on Tuesday</p> <p>24 you wanted to explain to Mr. Olson why the</p> <p>25 original UEP guidelines didn't prescribe a</p>	<p style="text-align: right;">896</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 they do quite well during that period</p> <p>3 of time. But anyway, that was the</p> <p>4 only way known. But one of the</p> <p>5 scientists that was working with us</p> <p>6 said you also have to look at this as</p> <p>7 a public issue. What if the public</p> <p>8 was to learn that you're taking feed</p> <p>9 away from animals, that would be an</p> <p>10 unacceptable public issue. So we</p> <p>11 said, okay, we've got to find out a</p> <p>12 way to resolve this. So we</p> <p>13 commissioned research on molting to</p> <p>14 see if we could find a way to induce a</p> <p>15 molt without taking feed away, and lo</p> <p>16 and behold despite everybody saying it</p> <p>17 couldn't be done, we did find it. And</p> <p>18 believe me, it works and everybody</p> <p>19 just loves it.</p> <p>20 BY MS. LEVINE:</p> <p>21 Q. Mr. Olson asked you about</p> <p>22 feeder space.</p> <p>23 A. Yes.</p> <p>24 Q. Can you take a look at</p> <p>25 Gregory-20, which are the September 2000</p>
<p style="text-align: right;">895</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 specific maximum period of time that feed</p> <p>3 could be withdrawn to induce a molt? And you</p> <p>4 did not have an opportunity to explain</p> <p>5 yourself. Could you, please, explain now</p> <p>6 what you wanted to tell Mr. Olson about that?</p> <p>7 MR. OLSON: Objection to form.</p> <p>8 THE WITNESS: Well, at that time</p> <p>9 when the molt recommendations were</p> <p>10 being made, the scientists said we</p> <p>11 recognize the benefits and it's</p> <p>12 scientifically justified to put hens</p> <p>13 in molt. And the only known way to do</p> <p>14 that is withdraw feed. And different</p> <p>15 programs, different programs produced</p> <p>16 better results. Surprisingly, hens</p> <p>17 that went off of feed for more days</p> <p>18 actually were -- produced better eggs</p> <p>19 and longer eggs than those that were</p> <p>20 put in a short molt, short few days</p> <p>21 because in a short few days, they</p> <p>22 didn't accomplish what's needed as a</p> <p>23 molt. Now, it's appalling to me that</p> <p>24 you have to take feed away from any</p> <p>25 animal, but it's surprisingly that</p>	<p style="text-align: right;">897</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 recommendations?</p> <p>3 A. Yes.</p> <p>4 Q. Take a look at UE0208693.</p> <p>5 A. Yes.</p> <p>6 Q. What was the Scientific</p> <p>7 Advisory Committee's recommendation on feeder</p> <p>8 space?</p> <p>9 A. Four inches per bird.</p> <p>10 Q. Could you read that into the</p> <p>11 record, please, sir?</p> <p>12 A. "A minimum feeder space of 4</p> <p>13 inches per bird should be allocated such that</p> <p>14 all birds can feed simultaneously."</p> <p>15 Q. And can you go to the 2002</p> <p>16 guidelines, Exhibit 107?</p> <p>17 A. Yes.</p> <p>18 Q. You should have it right in</p> <p>19 front of you. And can you look at the</p> <p>20 housing and space allowance on page 4?</p> <p>21 A. Yes.</p> <p>22 Q. What was the recommendation</p> <p>23 adopted on feeder space?</p> <p>24 A. "Feeder space should be</p> <p>25 sufficient to allow all birds to eat at the</p>

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<p style="text-align: right;">898</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 same time."</p> <p>3 Q. Why wasn't four inches</p> <p>4 specified?</p> <p>5 MR. OLSON: Objection to form.</p> <p>6 THE WITNESS: It's a really good</p> <p>7 question. Because you see in addition</p> <p>8 to floor space in a cage, the feeder</p> <p>9 space is running along in front of it.</p> <p>10 So if you were to go to four inches of</p> <p>11 feeder space per bird, that was</p> <p>12 increasing the feeder space based on</p> <p>13 what current we're doing. And just in</p> <p>14 order to meet that guideline would</p> <p>15 mean that you have to take more birds</p> <p>16 out of the cages and depopulate more</p> <p>17 birds, that would have meant that we</p> <p>18 would have further reduced the flock</p> <p>19 size. But what we argued with the</p> <p>20 Scientific Committee about is that we,</p> <p>21 with the existing equipment the way we</p> <p>22 have it, we don't think that that's</p> <p>23 possible without taking several</p> <p>24 million more hens out of the market.</p> <p>25 We said that as we phased this in, as</p>	<p style="text-align: right;">900</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 so through the period of time, then</p> <p>3 the Scientific Committee changed their</p> <p>4 recommendation to three inches, I</p> <p>5 believe, and wrote it in particularly</p> <p>6 for cage free birds which you would</p> <p>7 think need more space than cage birds.</p> <p>8 BY MS. LEVINE:</p> <p>9 Q. So, Mr. Gregory, do the</p> <p>10 guidelines incorporate the Scientific</p> <p>11 Advisory Committee's recommendation that all</p> <p>12 birds be able to eat at one time?</p> <p>13 MR. OLSON: Objection to form.</p> <p>14 THE WITNESS: That's what it</p> <p>15 says, yes.</p> <p>16 BY MS. LEVINE:</p> <p>17 Q. That's what the guidelines say.</p> <p>18 Right?</p> <p>19 A. Yes.</p> <p>20 Q. Can you take a look at</p> <p>21 Gregory-5? Do you have that handy?</p> <p>22 A. Do I need to keep these out?</p> <p>23 Q. Yeah, keep those out. Just</p> <p>24 look at Gregory-5. I'm going to hold this</p> <p>25 for you.</p>
<p style="text-align: right;">899</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 you increase floor space per bird,</p> <p>3 that correlates by the fact that</p> <p>4 you're also at the same time</p> <p>5 increasing the feeder space per bird.</p> <p>6 We said by the time we phase this in,</p> <p>7 that we will have accomplished that.</p> <p>8 But in the meantime, the Scientific</p> <p>9 Committee did more field research on</p> <p>10 this because that recommendation came</p> <p>11 out of university research. That was</p> <p>12 not based on commercial operations.</p> <p>13 So they looked at this in the</p> <p>14 field. Than a guy named Dr. -- I</p> <p>15 think his name is Paul Gardner, at</p> <p>16 Purdue University, then did a feeder</p> <p>17 space research project, and I think</p> <p>18 it's called epidemiologic. I don't</p> <p>19 understand what all it is, research</p> <p>20 project, funded by the U.S. Poultry</p> <p>21 and Egg Association. And what he</p> <p>22 found in commercial -- in commercial</p> <p>23 business that range, as I recall,</p> <p>24 something like 2.7 to 3.3 space was</p> <p>25 enough for a white Leghorn hen. And</p>	<p style="text-align: right;">901</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. I've got it.</p> <p>3 Q. On Gregory-5 on page 3, top of</p> <p>4 page 3 which is UE0567057.</p> <p>5 A. Yes.</p> <p>6 Q. You said, or the document says,</p> <p>7 "UEP has never rejected a recommendation by</p> <p>8 the committee." What did you mean by that?</p> <p>9 A. We accepted -- we accepted --</p> <p>10 the board accepted those recommendations and</p> <p>11 endorsed them unanimously. We accepted them</p> <p>12 with the understanding that there were some</p> <p>13 things that we could not do immediately, and</p> <p>14 accepted with the understanding that the</p> <p>15 Producer Committee was working on this and</p> <p>16 trying to figure out -- you see the</p> <p>17 Scientific Committee never told us when and</p> <p>18 how to do these things. They just said this</p> <p>19 is what it should be. So the Producer</p> <p>20 Committee then had to work on this. But the</p> <p>21 board or the Producer Committee would never</p> <p>22 ever -- never ever question the Scientific</p> <p>23 Committee's recommendation.</p> <p>24 Q. Mr. Gregory, can you look at</p> <p>25 document 27 that was marked as 27. Which</p>

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<p style="text-align: right;">902</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 pile is that?</p> <p>3 A. You think it's in this pile?</p> <p>4 Q. This pile.</p> <p>5 A. Okay, I got it here.</p> <p>6 Q. On Tuesday, Mr. Olson asked you</p> <p>7 about Joy Mench's statement on page 2, that</p> <p>8 her opinion is that no hen should get less</p> <p>9 than 72 inches of cage space.</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall that you wanted</p> <p>12 to address the remainder of this e-mail, but</p> <p>13 Mr. Olson wouldn't let you at that time?</p> <p>14 A. I think so.</p> <p>15 Q. What else did you want to say?</p> <p>16 A. Well, what this was is that</p> <p>17 this 72 inches was based upon, you know,</p> <p>18 white birds and brown birds, and it was just</p> <p>19 birds in general. And, you know, 90,</p> <p>20 95 percent of our egg laying hens in the</p> <p>21 country are white birds.</p> <p>22 Q. Just want to put one issue to</p> <p>23 rest. What is beak trimming?</p> <p>24 A. Okay. Good one. Well,</p> <p>25 unfortunately the -- years ago the word was</p>	<p style="text-align: right;">904</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Committee came up with. Prior to this we had</p> <p>3 people beak trimming at 14 weeks of age or</p> <p>4 ten weeks of age or different ages, which</p> <p>5 they proved to us that that was maybe not a</p> <p>6 good practice, maybe it was inhumane, maybe</p> <p>7 there was greater pain and so forth. And</p> <p>8 based upon all the work that Dr. Patricia</p> <p>9 Hester had done, the recommendation was to</p> <p>10 try to breed birds that don't need to be beak</p> <p>11 trimmed which we haven't been able to do yet.</p> <p>12 But if you do need to beak trim, it should be</p> <p>13 done at ten days or younger. As a result of</p> <p>14 that, there's been lots of things happen</p> <p>15 since then. And many of our chicks are now</p> <p>16 beak treated, treatment done at day old at</p> <p>17 the hatchery.</p> <p>18 Q. Mr. Gregory, can you look,</p> <p>19 again, at Gregory-106 which is the most</p> <p>20 recent guidelines?</p> <p>21 A. I have 107.</p> <p>22 Q. It's 106.</p> <p>23 A. I think you had that and you</p> <p>24 handed it over to me. I think I couldn't</p> <p>25 find 106. Is it here?</p>
<p style="text-align: right;">903</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 used and animal activists have used it,</p> <p>3 de-beaking. And that implies to anyone not</p> <p>4 understanding our industry as if you had cut</p> <p>5 the beaks off of chicken. Well, that would</p> <p>6 be obviously foolish. What it's talking</p> <p>7 about is trimming, the bird -- birds have a</p> <p>8 beak that on the tip of it is a real sharp</p> <p>9 point. Quite honestly, it is a real sharp</p> <p>10 point because that's a defensive mechanism</p> <p>11 and they use it for fighting one another. So</p> <p>12 what happens is that you trim that tip off so</p> <p>13 that you have more of a blunt point rather</p> <p>14 than a sharp point, and the purpose of it is,</p> <p>15 is to avoid cannibalism.</p> <p>16 Now, again, I tell you, you</p> <p>17 know, you may -- a bird's beak is</p> <p>18 proportionate to its body. It's not like a</p> <p>19 fingernails, just growing all the time. You</p> <p>20 don't have to keep doing that. You do it</p> <p>21 only one time.</p> <p>22 Q. At what time do you do trim off</p> <p>23 that little end of the beak?</p> <p>24 A. Well, that's another real</p> <p>25 positive thing that I think our Scientific</p>	<p style="text-align: right;">905</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. That's okay. I'll give you my</p> <p>3 copy of 106. Here's Exhibit 106 for you.</p> <p>4 Can you turn to page 6?</p> <p>5 A. Yes.</p> <p>6 Q. And look at or review the</p> <p>7 second paragraph beginning, "After having</p> <p>8 reviewed the findings of the university</p> <p>9 research projects for non-feed withdrawal</p> <p>10 molt programs..."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Could you just read that to</p> <p>14 yourself?</p> <p>15 Has the Scientific Advisory</p> <p>16 Committee revised its recommendations on molt</p> <p>17 after this research was done?</p> <p>18 A. Yes, they did.</p> <p>19 Q. And is it indicated there?</p> <p>20 A. Yes.</p> <p>21 Q. I'm going to mark the next</p> <p>22 document. You can put that down, but don't</p> <p>23 lose it.</p> <p>24 A. I'll put it right here if you</p> <p>25 don't mind.</p>

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<p style="text-align: right;">906</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. I'm going to mark the next</p> <p>3 document as 108. It's Bates stamp UE0176451.</p> <p>4 - - -</p> <p>5 (Exhibit Gregory-108, 10/4/04</p> <p>6 Letter, Bates UE0176451, was marked</p> <p>7 for identification.)</p> <p>8 - - -</p> <p>9 BY MS. LEVINE:</p> <p>10 Q. Can you identify this document,</p> <p>11 Mr. Gregory?</p> <p>12 A. It's a letter being written by</p> <p>13 Dr. Armstrong to Paul Bahan who was the</p> <p>14 chairman of the Producer Committee for animal</p> <p>15 welfare at that time.</p> <p>16 Q. Why did the Scientific Advisory</p> <p>17 Committee oppose backfilling?</p> <p>18 A. Well, I think rather than me</p> <p>19 paraphrasing, I probably should read what Dr.</p> <p>20 Armstrong said.</p> <p>21 Q. Take your time.</p> <p>22 A. What -- he is -- you're waiting</p> <p>23 for my answer?</p> <p>24 Q. Yeah.</p> <p>25 A. What he's doing is he is</p>	<p style="text-align: right;">908</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: They, like we, had</p> <p>3 no idea that this was going to be</p> <p>4 something that was going to occur. It</p> <p>5 was unanticipated when it was learned</p> <p>6 about that, they felt it was an</p> <p>7 embarrassment upon what their intent</p> <p>8 and welfare guidelines were.</p> <p>9 BY MS. LEVINE:</p> <p>10 Q. Thank you, Mr. Gregory. You</p> <p>11 can put that document down.</p> <p>12 I'm going to move to another</p> <p>13 part of the program. Why are some guidelines</p> <p>14 assigned more points than others in the</p> <p>15 audit; for example, the overcrowding of</p> <p>16 cages?</p> <p>17 A. You know, the current audit is</p> <p>18 broken down, don't hold me to it exactly, but</p> <p>19 it's broken down into like 50 points for</p> <p>20 space or 45 -- I can't remember, 50 points, I</p> <p>21 use it 50 points for space, and 30 points for</p> <p>22 beak trimming, and 30 points for something</p> <p>23 else. So when you're talking about space,</p> <p>24 space is really only one thing. You know,</p> <p>25 you -- where when you're talking about beak</p>
<p style="text-align: right;">907</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 writing to the chairman, the Producer's</p> <p>3 Animal Welfare Committee providing reasons</p> <p>4 why it is -- it certainly is not something</p> <p>5 that the Scientific Committee anticipates,</p> <p>6 nor do they support. I'm speaking about</p> <p>7 backfilling. He identifies that the science</p> <p>8 talks about mixing birds from different age</p> <p>9 flocks, it causes -- it makes them more</p> <p>10 susceptible to disease. The vaccination</p> <p>11 schedules, the social companion, and a</p> <p>12 variety of reasons why it is not a good</p> <p>13 animal welfare practice to mix birds of</p> <p>14 different ages in the cages.</p> <p>15 He's also going forward to say</p> <p>16 that he doesn't believe that FMI and NCCR had</p> <p>17 any knowledge that our industry was</p> <p>18 backfilling and would not support that. And</p> <p>19 so he urged us to make this correction as</p> <p>20 quickly as possible.</p> <p>21 Q. And is that why backfilling</p> <p>22 was -- the issue and the prohibition of</p> <p>23 backfilling was not discussed originally by</p> <p>24 this Scientific Advisory Committee?</p> <p>25 MR. OLSON: Objection to form.</p>	<p style="text-align: right;">909</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 trimming and you got 30 points there, there</p> <p>3 are like a series of six questions that are</p> <p>4 each worth five points because they all fit</p> <p>5 into that. It's the same way with other</p> <p>6 segments. So it's not -- it's just not one</p> <p>7 box you're talking about. It involves, you</p> <p>8 know, feed, you know, it involves lighting,</p> <p>9 it involves, you know, a follow on beak</p> <p>10 trimming with certain medications and so</p> <p>11 forth. So it was necessary to identify all</p> <p>12 of these things separately and yet the blocks</p> <p>13 are pretty similar, but it also -- you have</p> <p>14 to understand as the Scientific Committee</p> <p>15 would say to you, that if you compromise</p> <p>16 space, you have created a compromise on</p> <p>17 everything that you're doing.</p> <p>18 Q. Was the criticism by the animal</p> <p>19 activists against the egg industry most</p> <p>20 focused on the cage issue?</p> <p>21 MR. OLSON: Objection to form.</p> <p>22 THE WITNESS: Yeah. I mean,</p> <p>23 they're activist is to eliminate</p> <p>24 cages, more so their movement is to</p> <p>25 eliminate animal agriculture, but</p>

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<p style="text-align: right;">910</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 their focus was up on cages and their</p> <p>3 attack upon us was that we keep these</p> <p>4 chickens in barren cages, that kind of</p> <p>5 thing, or battery cages I guess that's</p> <p>6 what the word is.</p> <p>7 BY MS. LEVINE:</p> <p>8 Q. That was one of the reasons for</p> <p>9 the points being assigned to the cage issue?</p> <p>10 MR. OLSON: Objection to form.</p> <p>11 THE WITNESS: Yes. Yes. It --</p> <p>12 we want -- and you have to understand</p> <p>13 that when the meetings with FMI and</p> <p>14 NCCR, I mean there's -- that was a</p> <p>15 critical important thing to them, to</p> <p>16 make sure you give the birds enough</p> <p>17 space type thing.</p> <p>18 BY MS. LEVINE:</p> <p>19 Q. Take a look at Exhibit 48,</p> <p>20 Mr. Gregory.</p> <p>21 A. Would it be in this pile now?</p> <p>22 Q. It's your most favorite</p> <p>23 document, it's Mr. Mueller's letter.</p> <p>24 A. Okay.</p> <p>25 Q. Okay. I'm just going to ask</p>	<p style="text-align: right;">912</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 trying every means they possibly could</p> <p>3 to throw up roadblocks against the</p> <p>4 development of this program.</p> <p>5 BY MS. LEVINE:</p> <p>6 Q. What was his concern that you</p> <p>7 just described? What was their business</p> <p>8 objective?</p> <p>9 MR. OLSON: Objection to form.</p> <p>10 BY MS. LEVINE:</p> <p>11 Q. If you know.</p> <p>12 A. No, I don't know what it was.</p> <p>13 Q. Why did they at this time not</p> <p>14 like the 100 percent rule? Do you know if</p> <p>15 they did not like the 100 percent rule?</p> <p>16 A. You know, it's interesting</p> <p>17 about Sparboe, Garth Sparboe, the son of the</p> <p>18 owner, president, Garth Sparboe was on the</p> <p>19 Producer Committee for Animal Welfare, and</p> <p>20 was a great contributor, and, you know, did</p> <p>21 things. He was one of the people that went</p> <p>22 with us to FMI and NCCR. But every time he'd</p> <p>23 go back home and he'd tell his dad about</p> <p>24 what's going on, he'd get his butt chewed out</p> <p>25 from his dad because of what was going on.</p>
<p style="text-align: right;">911</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 you a couple of questions, okay, Mr. Gregory?</p> <p>3 A. Okay.</p> <p>4 Q. Do you agree with Mr. Mueller's</p> <p>5 statement that the certified program had a</p> <p>6 hidden agenda?</p> <p>7 A. In fact, that's what was so</p> <p>8 irritating to me and caused my outburst a day</p> <p>9 or two ago because that was an insult upon</p> <p>10 what was going on. So I expressed some</p> <p>11 things about Mr. Mueller because of that</p> <p>12 statement that maybe I should not have done</p> <p>13 so.</p> <p>14 Q. I take it that you didn't agree</p> <p>15 with Mr. Mueller's characterization?</p> <p>16 A. I don't agree with most of the</p> <p>17 things of Mr. Mueller.</p> <p>18 Q. In fact, do you think that Mr.</p> <p>19 Mueller and the Sparboe Company were really</p> <p>20 concerned with a hidden agenda?</p> <p>21 MR. OLSON: Objection to form.</p> <p>22 THE WITNESS: Well, I don't</p> <p>23 know, my -- my suspicion is that this</p> <p>24 did not fit into their marketing plans</p> <p>25 at that time, at least, and they were</p>	<p style="text-align: right;">913</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 So I just think they felt the</p> <p>3 egg industry did not need to worry about</p> <p>4 animal welfare probably. I don't know what</p> <p>5 all their motives were. They were constantly</p> <p>6 trying to cause UEP problems.</p> <p>7 Q. Is that one of the reasons why</p> <p>8 you were not concerned with Mueller's letter?</p> <p>9 MR. OLSON: Objection to form.</p> <p>10 THE WITNESS: First of all, I</p> <p>11 think Mueller makes a number of, as</p> <p>12 such, statements in it that history</p> <p>13 proves was not -- did not come true.</p> <p>14 And he is making statements without</p> <p>15 being a participant in trying to</p> <p>16 resolve a public issue. He is sitting</p> <p>17 by and he's objecting to it and he's</p> <p>18 finding every roadblock that he can to</p> <p>19 stop UEP in most everything we do.</p> <p>20 He's as such laying out and telling us</p> <p>21 that he's going to sue, they're going</p> <p>22 to sue us.</p> <p>23 BY MS. LEVINE:</p> <p>24 Q. And were those reasons for</p> <p>25 Sparboe's own economic reasons?</p>

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<p style="text-align: right;">914</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Objection to form.</p> <p>3 THE WITNESS: I suspect it was,</p> <p>4 yes.</p> <p>5 BY MS. LEVINE:</p> <p>6 Q. Is that what you thought?</p> <p>7 MR. OLSON: Objection to form.</p> <p>8 THE WITNESS: I would assume so,</p> <p>9 yes.</p> <p>10 BY MS. LEVINE:</p> <p>11 Q. What is the purpose of the 100</p> <p>12 percent rule, Mr. Gregory?</p> <p>13 A. The Scientific Committee, when</p> <p>14 they made their recommendations, they were</p> <p>15 making recommendations to improve the welfare</p> <p>16 of animals. They were not making</p> <p>17 recommendations to improve the welfare of</p> <p>18 20 percent of the birds or 40 percent of the</p> <p>19 birds or 60 percent of the birds. It was</p> <p>20 about this is what we recommend for all</p> <p>21 birds. And so if UEP wanted to develop a</p> <p>22 certification program, it needed to be a</p> <p>23 credible program. And if you wanted to</p> <p>24 use -- you could take our guidelines and you</p> <p>25 could do whatever you want to, you could use</p>	<p style="text-align: right;">916</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 now and have been, I don't know, for, I don't</p> <p>3 know, maybe it's a couple years now, I'm not</p> <p>4 sure.</p> <p>5 Q. Why did they change their</p> <p>6 position on the 100 percent rule?</p> <p>7 MR. OLSON: Objection to form.</p> <p>8 THE WITNESS: I don't know all</p> <p>9 of it, but the series of events was</p> <p>10 that, you know, I hate to -- these</p> <p>11 kind of things have come up. There</p> <p>12 was undercover investigation done by</p> <p>13 an animal activist that somehow or</p> <p>14 another got into Sparboe farm, did a</p> <p>15 video, obviously like all of them,</p> <p>16 it's not a fair representation of the</p> <p>17 company. But that video was turned</p> <p>18 over to Brian Ross, and I believe he's</p> <p>19 with ABC News. Anyway ABC or Brian</p> <p>20 Ross did this big evening news show</p> <p>21 about the Sparboe Company and about</p> <p>22 their animal welfare programs or food</p> <p>23 safety programs, and I don't remember</p> <p>24 all of it, what was on it anyway, it</p> <p>25 just -- the company itself I think</p>
<p style="text-align: right;">915</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 what you want to, but if you wanted to use</p> <p>3 our certification program and use our logo</p> <p>4 and market your eggs just simply saying</p> <p>5 they're UEP certified, then there were</p> <p>6 certain practices that you were going to have</p> <p>7 to follow. And we could not go to our FMI,</p> <p>8 NCCR, any customer and say to them, hey, by</p> <p>9 the way, we've established Animal Welfare</p> <p>10 Guidelines for 20 percent of the birds. I</p> <p>11 mean, that would just have been ridiculous.</p> <p>12 We would have had no respect whatsoever.</p> <p>13 So the only way to do that, and</p> <p>14 the only way to avoid eggs coming out of a</p> <p>15 complex of several houses on the egg belts,</p> <p>16 going in the house and not being mixed up and</p> <p>17 all this and that was to say, okay, if you</p> <p>18 want to be on our program, it's got to be 100</p> <p>19 percent because we're going to be about</p> <p>20 improving the welfare of 100 percent of the</p> <p>21 birds, not just a few birds.</p> <p>22 Q. Was there a time when Sparboe</p> <p>23 changed its position on the 100 percent rule?</p> <p>24 A. Yes, they -- in fact, they are</p> <p>25 a good member of the UEP certified program</p>	<p style="text-align: right;">917</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 poorly represented themselves in that</p> <p>3 response to that, and they quickly</p> <p>4 lost customers. And Beth now by this</p> <p>5 time is the president of the company,</p> <p>6 and her husband Bob made a phone call</p> <p>7 to me and said I would like to meet</p> <p>8 with you, we need to apologize for</p> <p>9 everything, all the things we've said</p> <p>10 bad about UEP, and we've been wrong</p> <p>11 all along about this, we need your</p> <p>12 help. I explained that based on all</p> <p>13 the things you've done to us, why</p> <p>14 would I want to help you.</p> <p>15 We had a conversation on the</p> <p>16 phone and I said, you know what, Bob,</p> <p>17 I like you, and it's my duty to help</p> <p>18 companies that are in trouble. So I</p> <p>19 will meet with you if my attorney</p> <p>20 permits me to do so. I said, where do</p> <p>21 you want to meet? He said, I'll fly</p> <p>22 today down to Atlanta to do it.</p> <p>23 So I made a call to my attorney</p> <p>24 and said, hey --</p> <p>25 BY MS. LEVINE:</p>

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<p style="text-align: right;">918</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Don't divulge any communications</p> <p>3 with attorneys. You can just tell us about</p> <p>4 Sparboe and you.</p> <p>5 A. As a result, Bob Snell did fly</p> <p>6 to the airport in Atlanta. We met with him</p> <p>7 there. He shared what their problems were,</p> <p>8 asked for my help and I agreed to do</p> <p>9 everything I possibly could to help them.</p> <p>10 I then, because of all the</p> <p>11 things that they had done to us, I had a</p> <p>12 conference call, as I recall, with our</p> <p>13 Executive Committee and said this is what the</p> <p>14 situation is. Our Executive Committee, many</p> <p>15 of them were saying we don't give a damn,</p> <p>16 just, you know, let him -- it's not our</p> <p>17 problem, it's their problem. And I convinced</p> <p>18 the Executive Committee that it was my moral</p> <p>19 duty, I felt like, that if someone was in</p> <p>20 trouble in our industry, it put a bad light</p> <p>21 upon the entire industry. And as president</p> <p>22 of UEP, I felt compelled to go do what I</p> <p>23 could to help these people.</p> <p>24 Q. And is the example of Sparboe</p> <p>25 the exact reason for the 100 percent rule?</p>	<p style="text-align: right;">920</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 they're very pleased to be a UEP</p> <p>3 certified company and I think they</p> <p>4 will find that that 100 percent rule</p> <p>5 serves them well.</p> <p>6 BY MS. LEVINE:</p> <p>7 Q. Let's turn to another subject.</p> <p>8 Mr. Gregory, was there ever any</p> <p>9 agreement among certified companies not to</p> <p>10 purchase non-certified eggs?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: Agreement amongst</p> <p>13 companies?</p> <p>14 BY MS. LEVINE:</p> <p>15 Q. Certified companies not to</p> <p>16 purchase non-certified eggs?</p> <p>17 MR. OLSON: Same objection.</p> <p>18 THE WITNESS: There was no</p> <p>19 agreement amongst producers that I</p> <p>20 ever knew of. I think there's</p> <p>21 individual companies that made that</p> <p>22 decision, but I don't think there was</p> <p>23 ever any agreement. I'm sure there</p> <p>24 wasn't agreement.</p> <p>25 BY MS. LEVINE:</p>
<p style="text-align: right;">919</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Objection to form.</p> <p>3 THE WITNESS: That, I don't</p> <p>4 know. But to conclude it, I did then</p> <p>5 fly to Minneapolis and met with Snell</p> <p>6 and others and laid out how we could</p> <p>7 do this, what we had to do, what they</p> <p>8 had to do. As a result of it, they</p> <p>9 made a number of changes. And I hope</p> <p>10 that that's helped them retain their</p> <p>11 business and so forth. So...</p> <p>12 BY MS. LEVINE:</p> <p>13 Q. Are they now part of the</p> <p>14 certified program?</p> <p>15 A. Yes. Yes.</p> <p>16 Q. And are 100 percent of their</p> <p>17 facilities, their houses under the program?</p> <p>18 A. Absolutely.</p> <p>19 Q. Do you think that Sparboe</p> <p>20 considers the 100 percent rule now an</p> <p>21 antitrust violation?</p> <p>22 MR. OLSON: Objection to form.</p> <p>23 THE WITNESS: I don't know what</p> <p>24 they think. I have not had a</p> <p>25 conversation about that. I think that</p>	<p style="text-align: right;">921</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. I'm going to mark the next</p> <p>3 document as Gregory-109, which is Bates</p> <p>4 stamped UE0210295 through UE0210298.</p> <p>5 A. Yes.</p> <p>6 - - -</p> <p>7 (Exhibit Gregory-109,</p> <p>8 UEP-Producer Committee For Animal</p> <p>9 Welfare January 24, 2005 Atlanta, GA</p> <p>10 Minutes, Bates UE0210295 - UE0210298,</p> <p>11 was marked for identification.)</p> <p>12 - - -</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. Can you identify this document?</p> <p>15 A. It is a -- the minutes of a</p> <p>16 "UEP-Producer Committee For Animal Welfare."</p> <p>17 Q. What is the date?</p> <p>18 A. The date, January 24, 2005.</p> <p>19 That just happened to be the birthday of two</p> <p>20 of us in the room.</p> <p>21 Q. Can you go to page 2?</p> <p>22 A. Yes.</p> <p>23 Q. About the middle of the page it</p> <p>24 says, "Who May Market Animal Care Certified</p> <p>25 Eggs?"</p>

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<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Do you see that?</p> <p>3 A. Yes. Do you want me to read</p> <p>4 it?</p> <p>5 Q. Do you see where you presented</p> <p>6 Mr. Isaacson's legal opinion? Do you see</p> <p>7 that?</p> <p>8 A. Yes.</p> <p>9 Q. Can you read what is in quotes</p> <p>10 there?</p> <p>11 A. "'In order to protect the</p> <p>12 integrity of...'" this in those days what's</p> <p>13 still called Animal Care Certified. "'In</p> <p>14 order to protect the integrity of the ACC</p> <p>15 program and logo and in view of the</p> <p>16 difficulty in preventing the commingling of</p> <p>17 certified eggs with non-certified eggs and to</p> <p>18 treat all egg producers equally, it is hereby</p> <p>19 moved: - That no new licenses to market</p> <p>20 Animal Care Certified eggs will be issued or</p> <p>21 renewed to producers who are not ACC</p> <p>22 certified.'"</p> <p>23 Q. Why was that motion made?</p> <p>24 MR. OLSON: Objection to form.</p> <p>25 THE WITNESS: Well, you know,</p>	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 enough that it needed to change the</p> <p>3 program so that this did not continue</p> <p>4 to occur.</p> <p>5 BY MS. LEVINE:</p> <p>6 Q. And that was the situation that</p> <p>7 you described to Ms. Cain-Mannix this morning</p> <p>8 as violating the program and misrepresenting</p> <p>9 the product. Is that right?</p> <p>10 A. That's right.</p> <p>11 Q. And going back to the document</p> <p>12 in front of you, that motion that you read in</p> <p>13 was made?</p> <p>14 A. Was it made you said?</p> <p>15 Q. Yes.</p> <p>16 A. It says that "It was moved by</p> <p>17 Fortin and seconded by Bynum to approve the</p> <p>18 preamble and motion recommended by Isaacson."</p> <p>19 Q. Did that motion pass?</p> <p>20 A. It carried with two no votes.</p> <p>21 Q. Is Irving Isaacson's language</p> <p>22 here accurate that the motion was to protect</p> <p>23 the integrity of the program?</p> <p>24 MR. OLSON: Objection to form.</p> <p>25 THE WITNESS: That is his direct</p>
923	925
<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 I'm not sure the timing of this, but</p> <p>3 we had a situation in the Northeast</p> <p>4 with a producer that we felt</p> <p>5 misrepresented what he was doing. He</p> <p>6 was authorized to buy eggs from a</p> <p>7 certified company and sell those eggs</p> <p>8 as Animal Care Certified, only those</p> <p>9 eggs that he bought from a certified</p> <p>10 company. There were a number of</p> <p>11 competitors in that area that were in</p> <p>12 stores that this company -- now you</p> <p>13 want me to -- I'll name the name,</p> <p>14 Kreider Farms was marketing eggs. And</p> <p>15 they provided the USDA number, every</p> <p>16 plant has a USDA number, and they</p> <p>17 provided pictures and USDA numbers,</p> <p>18 and et cetera, that demonstrated to us</p> <p>19 that, in fact, Kreider was putting</p> <p>20 his -- putting our ACC logo on eggs</p> <p>21 that he was producing himself which</p> <p>22 were not certified. They provided us</p> <p>23 with pictures, as I recall, at the</p> <p>24 time and numbers and all that kind of</p> <p>25 stuff. We felt that it was legitimate</p>	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 quote.</p> <p>3 BY MS. LEVINE:</p> <p>4 Q. And do you agree?</p> <p>5 A. Yes.</p> <p>6 Q. Does this refresh your</p> <p>7 recollection as to what certain producers</p> <p>8 were concerned about at the producer meeting</p> <p>9 about 11 months later?</p> <p>10 A. Well, I don't remember the</p> <p>11 time, but they were concerned that allowing a</p> <p>12 producer to buy certified eggs from somebody</p> <p>13 else when he's already in production himself,</p> <p>14 that we could jeopardize the credibility and</p> <p>15 producers could be, in fact, misusing that</p> <p>16 carton on their own eggs, so we needed to</p> <p>17 find a way to stop that situation.</p> <p>18 Q. Would you take a look at</p> <p>19 Exhibit 70 that was discussed this morning.</p> <p>20 A. 70. Okay.</p> <p>21 Q. And what you just testified to</p> <p>22 in these last couple of questions about</p> <p>23 Kreider and about the motion and what you</p> <p>24 just said, is that what was going on and what</p> <p>25 was being expressed in Exhibit 70?</p>

71 (Pages 922 to 925)

<p style="text-align: right;">926</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Objection to form.</p> <p>3 THE WITNESS: You know, I</p> <p>4 can't -- this is, again, I apologize,</p> <p>5 this is seven and a half years ago or</p> <p>6 so forth, and I don't recall exactly</p> <p>7 what it is, but we're talking about</p> <p>8 some of these people have the concern</p> <p>9 about the discontinuation of that</p> <p>10 non-certified marketing agreement, and</p> <p>11 so as well as other things we go to</p> <p>12 Minneapolis to listen to their</p> <p>13 concerns and complaints.</p> <p>14 BY MS. LEVINE:</p> <p>15 Q. Thank you, Mr. Gregory.</p> <p>16 A. Listen, I know -- I don't know</p> <p>17 how this game is played, but I'm walking out</p> <p>18 of here at 3:00 because I need to catch a</p> <p>19 plane.</p> <p>20 Q. Take a look at Gregory-64.</p> <p>21 A. I have it. Yes.</p> <p>22 Q. Pull that out for just a</p> <p>23 minute.</p> <p>24 A. Yes.</p> <p>25 Q. On Wednesday Mr. Olson asked</p>	<p style="text-align: right;">928</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 know this is going to be a problem.</p> <p>3 So I think that's what he is talking</p> <p>4 about.</p> <p>5 BY MS. LEVINE:</p> <p>6 Q. Thank you, Mr. Gregory.</p> <p>7 In regard to USEM and the</p> <p>8 exports, who makes decisions about whether</p> <p>9 USEM will take a particular export?</p> <p>10 A. Initially it is the Export</p> <p>11 Executive Committee. And if they approve it,</p> <p>12 then it's forwarded on to the entire</p> <p>13 membership and ultimately the entire</p> <p>14 membership has to pass it by a majority of</p> <p>15 the members.</p> <p>16 Q. This morning you told -- Ms.</p> <p>17 Cain-Mannix showed you a United Voices, I</p> <p>18 think it was in 2009 after this lawsuit had</p> <p>19 been taken. It's 91 if you want to take a</p> <p>20 look at it, Exhibit 91.</p> <p>21 A. I remember it.</p> <p>22 Q. And at that time for the Animal</p> <p>23 Welfare Marketing Committees, you said they</p> <p>24 will be closed to UEP members only?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">927</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 you about this document. What did Mr. Dean</p> <p>3 mean when he said that backfilling would</p> <p>4 cause problems in the future with flock</p> <p>5 identity?</p> <p>6 MR. OLSON: I'm sorry, I might</p> <p>7 have the wrong one. Could you show me</p> <p>8 what 64 looks like? Okay. I</p> <p>9 apologize. And I'll object to the</p> <p>10 form.</p> <p>11 THE WITNESS: So I can't --</p> <p>12 because he doesn't identify it here, I</p> <p>13 can't be certain what he's talking</p> <p>14 about. As I tried to explain, we have</p> <p>15 two issues that's coming down the pike</p> <p>16 on us. One is we have a USDA animal</p> <p>17 ID system that is going to create real</p> <p>18 problems for us because we argue with</p> <p>19 USDA to have that ID system for egg</p> <p>20 laying hens as a flock rather than an</p> <p>21 individual bird.</p> <p>22 We also have been working with</p> <p>23 USDA -- with FDA on an egg safety rule</p> <p>24 for quite a long time. And we know,</p> <p>25 because we've working with them, we</p>	<p style="text-align: right;">929</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And you said it was because of</p> <p>3 the lawsuit?</p> <p>4 A. Yes.</p> <p>5 Q. Did you have a concern that</p> <p>6 people from UEA were talking to the</p> <p>7 plaintiffs or others about the lawsuit?</p> <p>8 MR. OLSON: Objection to form.</p> <p>9 THE WITNESS: There was a number</p> <p>10 of things. The date on that is what?</p> <p>11 BY MS. LEVINE:</p> <p>12 Q. January 20, 2009.</p> <p>13 A. When we saw the Complaint and I</p> <p>14 read the Complaint, I was how in the world</p> <p>15 did plaintiff attorneys get all of this</p> <p>16 stuff. Where did they get all this from.</p> <p>17 And the idea -- thought was that somebody has</p> <p>18 left our meetings and is turning information</p> <p>19 over to we believe the Humane Society of the</p> <p>20 United States or animal activists. And so we</p> <p>21 decided we had to be more protective of what</p> <p>22 might be leaving these meetings and so forth.</p> <p>23 We also decided that we need to say right up</p> <p>24 front that this is how we're going to --</p> <p>25 before we had had executive sessions, but</p>

72 (Pages 926 to 929)

<p style="text-align: right;">930</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 we -- everybody was in the room and we would</p> <p>3 say now we're going to go into exec session</p> <p>4 and now all of a sudden we had to take a 10,</p> <p>5 15-minute break for everybody else to get out</p> <p>6 of the room. So this time we're saying to</p> <p>7 them up front this is the way we're going to</p> <p>8 conduct meetings.</p> <p>9 Q. Let's focus you on another</p> <p>10 subject, Mr. Gregory. Whose interest does</p> <p>11 UEP represent?</p> <p>12 A. Egg farmers.</p> <p>13 Q. And whose interest does USEM</p> <p>14 represent?</p> <p>15 A. Egg farmers.</p> <p>16 Q. Is any UEP member given more</p> <p>17 than one vote based on the amount of stock or</p> <p>18 membership capital owned?</p> <p>19 A. No.</p> <p>20 Q. Is any USEM member given more</p> <p>21 than one vote based on the amount of stock or</p> <p>22 membership capital owned?</p> <p>23 MR. OLSON: Counsel, I'm going</p> <p>24 to object to this line of questioning</p> <p>25 as outside the scope of the direct</p>	<p style="text-align: right;">932</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 outside the scope.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MS. LEVINE:</p> <p>5 Q. Does UEP pay dividends?</p> <p>6 A. No.</p> <p>7 MR. OLSON: I object to this as</p> <p>8 outside the scope.</p> <p>9 BY MS. LEVINE:</p> <p>10 Q. I want to talk to you a little</p> <p>11 bit about marketing aspects. Does UEP help</p> <p>12 members buy and sell eggs?</p> <p>13 A. We have had a service of</p> <p>14 that -- well, our regionals had provided that</p> <p>15 service until the consolidation and then we</p> <p>16 continued doing that. However, since the</p> <p>17 lawsuit has filed, our business has declined</p> <p>18 considerably.</p> <p>19 Q. Does UEP have an egg trading</p> <p>20 program?</p> <p>21 A. Yes.</p> <p>22 Q. That helped market eggs.</p> <p>23 Correct?</p> <p>24 MR. OLSON: Objection to form.</p> <p>25 THE WITNESS: That helps</p>
<p style="text-align: right;">931</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 examination.</p> <p>3 THE WITNESS: No.</p> <p>4 MS. LEVINE: You started the</p> <p>5 deposition asking him about</p> <p>6 Capper-Volstead, so I think it's right</p> <p>7 in. Continue with the --</p> <p>8 MR. OLSON: I started the</p> <p>9 deposition asking him about</p> <p>10 Capper-Volstead?</p> <p>11 THE WITNESS: No. No.</p> <p>12 BY MS. LEVINE:</p> <p>13 Q. Does UEP pay dividends?</p> <p>14 A. No.</p> <p>15 MR. OLSON: Can I just have a</p> <p>16 stipulation to that objection for this</p> <p>17 line of questioning?</p> <p>18 MS. LEVINE: Let's -- we can</p> <p>19 always deal with the transcript after.</p> <p>20 Mr. Gregory has limited time --</p> <p>21 MR. OLSON: So I'll object after</p> <p>22 every question then.</p> <p>23 BY MS. LEVINE:</p> <p>24 Q. Does USEM pay dividends?</p> <p>25 MR. OLSON: I object to this as</p>	<p style="text-align: right;">933</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 producers with surplus eggs find a</p> <p>3 producer that is in need of eggs.</p> <p>4 BY MS. LEVINE:</p> <p>5 Q. Does UEP help members set</p> <p>6 standards?</p> <p>7 MR. OLSON: Objection to form.</p> <p>8 THE WITNESS: Well, we think</p> <p>9 that we cooperate on setting standards</p> <p>10 for food safety and on animal welfare</p> <p>11 if that's what you're referring to,</p> <p>12 yes.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. And can you explain the food</p> <p>15 safety programs at UEP?</p> <p>16 A. It's kind of complicated, but</p> <p>17 it's a program that to address a problem of</p> <p>18 called salmonella enteritidis, SE, and it is</p> <p>19 -- it requires certain sanitation practices,</p> <p>20 it requires certain inspection services. I</p> <p>21 mean, the whole -- the program is quite</p> <p>22 extensive and UEP's program is in many</p> <p>23 respects hitting most all the highlights of</p> <p>24 the FDA egg safety rule as well.</p> <p>25 MR. OLSON: Counsel, just</p>

73 (Pages 930 to 933)

<p style="text-align: right;">934</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 briefly --</p> <p>3 MS. LEVINE: You can do a</p> <p>4 continuing objection, but please don't</p> <p>5 interrupt my question.</p> <p>6 MR. OLSON: This is not an</p> <p>7 objection. I just want to note we're</p> <p>8 at 40 minutes until 3:00. As you know</p> <p>9 we've reserved 40 minutes and the</p> <p>10 witness has said he's leaving at the</p> <p>11 stroke of 3:00, so if there's an issue</p> <p>12 we should discuss about that, perhaps</p> <p>13 we should discuss it now.</p> <p>14 MS. LEVINE: Mr. Gregory, since</p> <p>15 you have the 6:00 flight and we're in</p> <p>16 the middle, you will get there in</p> <p>17 plenty of time if you leave at about</p> <p>18 3:15. Would that be okay, so we</p> <p>19 can --</p> <p>20 THE WITNESS: That's fine, but</p> <p>21 twice I've been up here and because of</p> <p>22 that bridge construction out there,</p> <p>23 it's not easy.</p> <p>24 MS. ANDERSON: Some of the</p> <p>25 defendants also have questions.</p>	<p style="text-align: right;">936</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 could be members of UEP. Right?</p> <p>3 A. By the fact that they own</p> <p>4 birds, yes.</p> <p>5 Q. What are starter pullets?</p> <p>6 A. That is a name that we use for</p> <p>7 pullets that are growing in the growing</p> <p>8 houses from the day that you put them in the</p> <p>9 grower house at day one until they reach a</p> <p>10 mature age that they're ready to start laying</p> <p>11 hens. They're called -- they're pullets and</p> <p>12 we call them starter pullets.</p> <p>13 Q. Owners of starter pullets or</p> <p>14 people in the starter pullets business could</p> <p>15 be members of UEP?</p> <p>16 A. Yes.</p> <p>17 MR. OLSON: Objection to form.</p> <p>18 THE WITNESS: By the fact that</p> <p>19 they own birds.</p> <p>20 BY MS. LEVINE:</p> <p>21 Q. Also cooperatives, egg</p> <p>22 cooperatives could be members. Correct?</p> <p>23 A. If they are in -- if they're an</p> <p>24 agriculture cooperative with members that own</p> <p>25 egg laying hens or one of these other things,</p>
<p style="text-align: right;">935</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: That's why I raise</p> <p>3 it now just so we can address whatever</p> <p>4 we need to do logistically.</p> <p>5 MS. LEVINE: I'm going to ask a</p> <p>6 few more questions and then we'll see</p> <p>7 what we can do.</p> <p>8 BY MS. LEVINE:</p> <p>9 Q. Does UEP help members with</p> <p>10 financing?</p> <p>11 A. No.</p> <p>12 Q. In terms of insurance, does it</p> <p>13 help -- does it have an insurance program?</p> <p>14 A. We have an insurance program.</p> <p>15 Q. Mr. Gregory, what is a breeder</p> <p>16 flock?</p> <p>17 MR. OLSON: Objection to form.</p> <p>18 Outside the scope.</p> <p>19 THE WITNESS: A breeder flock is</p> <p>20 a flock that has laying hens and</p> <p>21 roosters in it in which they are going</p> <p>22 to mate hopefully and produce fertile</p> <p>23 eggs.</p> <p>24 BY MS. LEVINE:</p> <p>25 Q. And producers of breeder flocks</p>	<p style="text-align: right;">937</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 yes.</p> <p>3 Q. Also contract producers could</p> <p>4 be members of UEP?</p> <p>5 A. Yes.</p> <p>6 Q. And you considered all of those</p> <p>7 entities to be farmers. Is that correct?</p> <p>8 MR. OLSON: Objection to form.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MS. LEVINE:</p> <p>11 Q. And you have board meetings,</p> <p>12 Executive Committee meetings by phone at</p> <p>13 times. Right?</p> <p>14 A. Yes.</p> <p>15 Q. And are those meetings closed?</p> <p>16 MR. OLSON: Objection to form.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MS. LEVINE:</p> <p>19 Q. And you call special meetings</p> <p>20 from time to time, isn't that so?</p> <p>21 A. Yes.</p> <p>22 Q. Are those meetings closed?</p> <p>23 A. Yes, unless someone is invited</p> <p>24 to make a presentation.</p> <p>25 Q. And the economic summit that we</p>

74 (Pages 934 to 937)

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<p style="text-align: right;">938</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 spent time talking about in 2004, just UEP</p> <p>3 producers was invited to that meeting, isn't</p> <p>4 that so?</p> <p>5 MR. OLSON: Objection to form.</p> <p>6 THE WITNESS: There were no --</p> <p>7 we invited Lou Raffle or Joanne Ivy, I</p> <p>8 don't remember, from the American Egg</p> <p>9 Board. We invited Ron Whaley from</p> <p>10 Country Creek Farms. That may have</p> <p>11 been the only exceptions. They were</p> <p>12 there to make presentations.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. They were there just for</p> <p>15 presentations. Correct?</p> <p>16 A. Yes.</p> <p>17 MR. OLSON: Objection to form.</p> <p>18 MS. LEVINE: We're going to mark</p> <p>19 the next document Gregory-110. It is</p> <p>20 UE0176108. Handing it to the witness.</p> <p>21 - - -</p> <p>22 (Exhibit Gregory-110, Letter,</p> <p>23 Bates UE0176108, was marked for</p> <p>24 identification.)</p> <p>25 - - -</p>	<p style="text-align: right;">940</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 I'm just going to take a quick</p> <p>3 look, and I think then I am finished.</p> <p>4 A. And then I'll take that</p> <p>5 30-second bathroom break that he needed a</p> <p>6 little bit ago.</p> <p>7 MS. LEVINE: Mr. Gregory, I'm</p> <p>8 finished with my questions. You can</p> <p>9 take your 30-second bathroom break and</p> <p>10 come on back.</p> <p>11 THE WITNESS: Thank you.</p> <p>12 VIDEOGRAPHER: The time is</p> <p>13 approximately 2:26 p.m. We're off the</p> <p>14 record.</p> <p>15 - - -</p> <p>16 (A recess was taken.)</p> <p>17 - - -</p> <p>18 VIDEOGRAPHER: The time is</p> <p>19 approximately 2:33 p.m. This begins</p> <p>20 tape six, volume three. We are back</p> <p>21 on the record.</p> <p>22 - - -</p> <p>23 EXAMINATION</p> <p>24 - - -</p> <p>25 BY MR. BARNES:</p>
<p style="text-align: right;">939</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. LEVINE:</p> <p>3 Q. Mr. Gregory, can you identify</p> <p>4 this document?</p> <p>5 A. It appears to me that it's a</p> <p>6 letter from Roger Deffner, UEP chairman and</p> <p>7 Dolph Baker, the Marketing Committee chairman</p> <p>8 announcing, looks to me like announcing an</p> <p>9 egg economic summit.</p> <p>10 Q. In the second paragraph I'm</p> <p>11 going to read you a sentence, and you let me</p> <p>12 know if I read it correctly. "Only UEP</p> <p>13 members are invited so therefore guests will</p> <p>14 not be welcome. Invited UEP members are</p> <p>15 company owners, decision makers, and key</p> <p>16 staff members."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Does that help refresh your</p> <p>20 recollection that in the economic summit only</p> <p>21 UEP members were invited?</p> <p>22 A. Yes. Right.</p> <p>23 MR. OLSON: Objection to form.</p> <p>24 BY MS. LEVINE:</p> <p>25 Q. Thank you.</p>	<p style="text-align: right;">941</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Mr. Gregory, my name is Donald</p> <p>3 Barnes. I represent Rose Acre Farms. As you</p> <p>4 know, we are a UEP member and we also have</p> <p>5 the pleasure of defending this lawsuit.</p> <p>6 The court reporter has put</p> <p>7 before you a document marked by Mr. Olson as</p> <p>8 Gregory Exhibit 65 --</p> <p>9 A. Yes.</p> <p>10 Q. -- which is the United Voices</p> <p>11 newsletter of November 23, 2004, regarding</p> <p>12 the egg industry economic summit. Do you see</p> <p>13 that?</p> <p>14 A. Yes. Uh-huh.</p> <p>15 Q. Let me direct your attention to</p> <p>16 the second page, please.</p> <p>17 A. Yes.</p> <p>18 Q. Now, down in the middle of the</p> <p>19 page, there's a reference to option 1 and</p> <p>20 option 2. Do you see that reference?</p> <p>21 A. Yes. Yes.</p> <p>22 Q. And Mr. Olson directed your</p> <p>23 attention to those options. The first option</p> <p>24 was to dispose of hens early, four weeks</p> <p>25 early. Do you see that?</p>

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<p style="text-align: right;">942</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. The second option he directed</p> <p>4 your attention to was "To reduce their</p> <p>5 December 1, 2004 flock size by 5% between the</p> <p>6 dates of January 1st through April 30, 2005."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And then he directed your</p> <p>10 attention to a list of companies that made</p> <p>11 their intentions known during economic</p> <p>12 summit?</p> <p>13 A. Yes.</p> <p>14 Q. Is my client's name on that</p> <p>15 list?</p> <p>16 A. No, it is not.</p> <p>17 Q. To your knowledge, Mr. Gregory,</p> <p>18 did Rose Acre Farms ever sign any of the</p> <p>19 intention forms in which they expressed an</p> <p>20 intention to adopt option 1 or option 2 as</p> <p>21 referenced in these minutes of the economic</p> <p>22 summit?</p> <p>23 MR. OLSON: Objection to form.</p> <p>24 THE WITNESS: Going a little</p> <p>25 further, I don't think Rose Acre Farms</p>	<p style="text-align: right;">944</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 have sent a letter, you know, saying these</p> <p>3 people have made these kind of commitments.</p> <p>4 There's too many series of events. I don't</p> <p>5 know.</p> <p>6 Q. I understand.</p> <p>7 A. I don't know.</p> <p>8 Q. I'm just going to quickly show</p> <p>9 you a document which we will mark as</p> <p>10 Exhibit --</p> <p>11 MS. LEVINE: 111.</p> <p>12 MR. BARNES: And if the reporter</p> <p>13 doesn't mind, to save time, I'll just</p> <p>14 put my mark on it.</p> <p>15 MR. OLSON: We have stickers.</p> <p>16 MR. BARNES: Okay. Exhibit 111.</p> <p>17 You got it great, very efficient.</p> <p>18 - - -</p> <p>19 (Exhibit Gregory-111, 11/17/04</p> <p>20 E-mail, Bates NL 000482, was marked</p> <p>21 for identification.)</p> <p>22 - - -</p> <p>23 BY MR. BARNES:</p> <p>24 Q. Mr. Gregory, let me show you --</p> <p>25 MR. BARNES: Steig.</p>
<p style="text-align: right;">943</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 ever agreed to any, any supply</p> <p>3 recommendation.</p> <p>4 BY MR. BARNES:</p> <p>5 Q. Now, you made a statement early</p> <p>6 on in your testimony that I thought was</p> <p>7 pretty perceptive. If you give me a minute,</p> <p>8 I'll hopefully be able to locate it. I</p> <p>9 believe you said that the industry is</p> <p>10 independent and the members are, I think you</p> <p>11 said, damn independent.</p> <p>12 A. Yes.</p> <p>13 Q. Is Rose Acre one of those damn</p> <p>14 independent members?</p> <p>15 A. I would say I'm afraid so.</p> <p>16 They do not lack for an opinion.</p> <p>17 Q. So to your knowledge, Rose Acre</p> <p>18 never signed any of these intention forms?</p> <p>19 A. To my knowledge, they never</p> <p>20 did.</p> <p>21 Q. Did you do any follow up after</p> <p>22 the economic summit meeting to determine --</p> <p>23 to follow up with the members who did not</p> <p>24 sign any intention forms?</p> <p>25 A. Gosh, I don't know. I might</p>	<p style="text-align: right;">945</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Thanks.</p> <p>3 BY MR. BARNES:</p> <p>4 Q. -- you what has been marked as</p> <p>5 Gregory Exhibit 11, which for the record --</p> <p>6 MS. LEVINE: 111.</p> <p>7 BY MR. BARNES:</p> <p>8 Q. Pardon me. 111, which for the</p> <p>9 record is a one-page document bearing</p> <p>10 document identification number NL 000482. It</p> <p>11 appears to be a memo from Mr. Gregory to Mr.</p> <p>12 Baker and Mr. Deffner dated November 17,</p> <p>13 2004, and the subject was "Economic Summit."</p> <p>14 Can you identify what has been</p> <p>15 marked as Exhibit 111?</p> <p>16 A. Yes. It's an e-mail from me to</p> <p>17 those parties that you just identified and</p> <p>18 the subject matter.</p> <p>19 Q. Now, in this document, my</p> <p>20 client is listed, aren't they?</p> <p>21 A. Yes.</p> <p>22 Q. And they're listed under the</p> <p>23 statement that you made in the letter which</p> <p>24 says, "Of those in attendance yesterday, the</p> <p>25 following did not sign an 'intention.'"</p>

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<p style="text-align: right;">946</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Is that correct?</p> <p>3 A. That's correct.</p> <p>4 Q. You can put that away, sir.</p> <p>5 Now, do you recall when Rose</p> <p>6 Acre Farms became a member of UEP?</p> <p>7 A. There's a little bit of history</p> <p>8 here, and we don't really have time for that,</p> <p>9 so, no, I do not know.</p> <p>10 Q. Okay. We're going to see if we</p> <p>11 can refresh your recollection.</p> <p>12 A. Okay. Good.</p> <p>13 Q. We're going to mark as our next</p> <p>14 exhibit, and I hope I have enough of these.</p> <p>15 This is 112.</p> <p>16 - - -</p> <p>17 (Exhibit Gregory-112, A</p> <p>18 Membership Opportunity Presented By</p> <p>19 UEP and Midwest UEP To ROSE ACRE</p> <p>20 FARMS® THE GOOD EGG PEOPLE®, Bates</p> <p>21 UE0186974 & UE0186975, was marked for</p> <p>22 identification.)</p> <p>23 - - -</p> <p>24 BY MR. BARNES:</p> <p>25 Q. Mr. Gregory, let me show you</p>	<p style="text-align: right;">948</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. BARNES:</p> <p>3 Q. What is this document,</p> <p>4 Mr. Gregory?</p> <p>5 A. At the time I was working for</p> <p>6 Midwest United Egg Producers and trying to</p> <p>7 recruit members and it appears that this was</p> <p>8 a piece of literature that I used to try to</p> <p>9 convince Rose Acre Farms that they -- what</p> <p>10 the benefits were of becoming a member. I</p> <p>11 don't know what this -- this is not dated, so</p> <p>12 I don't know the date.</p> <p>13 Q. I understand. But it does</p> <p>14 refer to Midwest UEP on the first page. Do</p> <p>15 you see that?</p> <p>16 A. So that would precede 1998. We</p> <p>17 know that.</p> <p>18 Q. Thank you.</p> <p>19 Now, if you look at the second</p> <p>20 page, the second page is captured "UEP's</p> <p>21 value to Rose Acre Farms." Do you see that?</p> <p>22 A. Yes, I do.</p> <p>23 Q. And then you go on in a</p> <p>24 narrative form, and you then list things that</p> <p>25 you believe were of value to Rose Acre Farms.</p>
<p style="text-align: right;">947</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 what has been marked as Exhibit 112. It is a</p> <p>3 two-page document bearing identification</p> <p>4 number UE0186974. It's captioned "A</p> <p>5 Membership Opportunity Presented By UEP and</p> <p>6 Midwest UEP To ROSE ACRE FARMS® THE GOOD EGG</p> <p>7 PEOPLE®."</p> <p>8 Can you identify this document?</p> <p>9 A. Yes.</p> <p>10 Q. And is it what it purports to</p> <p>11 be, an invitation to Rose Acre Farms?</p> <p>12 MR. OLSON: Objection to form.</p> <p>13 BY MR. BARNES:</p> <p>14 Q. What is it?</p> <p>15 MR. OLSON: You're asking is the</p> <p>16 document --</p> <p>17 MR. BARNES: No, I'm asking the</p> <p>18 witness.</p> <p>19 MR. OLSON: I thought you were</p> <p>20 asking me.</p> <p>21 MR. BARNES: No. You objected</p> <p>22 to my question, so I'm going to try to</p> <p>23 cure the objection.</p> <p>24 MR. OLSON: Okay. Then</p> <p>25 I apologize.</p>	<p style="text-align: right;">949</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Objection to form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. BARNES:</p> <p>5 Q. And this was given to Rose Acre</p> <p>6 Farms to induce them to join UEP. Is that</p> <p>7 correct?</p> <p>8 MR. OLSON: Objection to form.</p> <p>9 THE WITNESS: That's correct.</p> <p>10 BY MR. BARNES:</p> <p>11 Q. Thank you.</p> <p>12 Now, this was prior to '98, did</p> <p>13 you say?</p> <p>14 A. Yes.</p> <p>15 Q. How long did it take to you to</p> <p>16 get Rose -- to convince Rose Acre to become a</p> <p>17 member, do you recall?</p> <p>18 A. I do not. No, I'm sorry, I do</p> <p>19 not.</p> <p>20 Q. We're going to mark our next</p> <p>21 exhibit UE -- Gregory -- what are we at?</p> <p>22 THE WITNESS: 113.</p> <p>23 - - -</p> <p>24 (Exhibit Gregory-113, UEP</p> <p>25 Membership agreement, Bates UE0148105,</p>

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<p style="text-align: right;">950</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 was marked for identification.)</p> <p>3 - - -</p> <p>4 BY MR. OLSON:</p> <p>5 Q. I'm going to show you Gregory</p> <p>6 Exhibit 113. Give these to Mr. Olson to</p> <p>7 distribute to the folks over there.</p> <p>8 Can you identify Exhibit 113?</p> <p>9 A. It is a UEP membership</p> <p>10 agreement.</p> <p>11 Q. What's the date of the</p> <p>12 membership agreement?</p> <p>13 A. It's hard to read, but it looks</p> <p>14 to me like it says 2/11/02.</p> <p>15 Q. And that is the same as one of</p> <p>16 the dates in the fax header, is it not,</p> <p>17 2/11/02?</p> <p>18 A. 2/11/2002, yes.</p> <p>19 Q. Is that your son's signature on</p> <p>20 the bottom of this membership agreement?</p> <p>21 A. Yes, it is.</p> <p>22 Q. Now, there's a figure under the</p> <p>23 column "CAPACITY." Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. It's 16 million?</p>	<p style="text-align: right;">952</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 captioned at the top "MAJOR PROSPECTS FOR</p> <p>3 UEP."</p> <p>4 A. Yes.</p> <p>5 Q. Can you identify that document,</p> <p>6 Mr. Gregory?</p> <p>7 A. Yes, sir.</p> <p>8 Q. What is it?</p> <p>9 A. It is a list of people that</p> <p>10 were not UEP members at the time that I wrote</p> <p>11 this.</p> <p>12 Q. So you were the author of this</p> <p>13 document?</p> <p>14 A. Yes. Yes.</p> <p>15 Q. Whose handwriting appears in</p> <p>16 the right-hand column?</p> <p>17 A. That's my handwriting.</p> <p>18 Q. Thank you. You may put that</p> <p>19 document aside.</p> <p>20 Now, do you recall when UEP</p> <p>21 became a member of USEM?</p> <p>22 MR. OLSON: Objection to form.</p> <p>23 THE WITNESS: No. UEP was never</p> <p>24 a member of --</p> <p>25 BY MR. BARNES:</p>
<p style="text-align: right;">951</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. What is that?</p> <p>4 A. That is the number of laying</p> <p>5 hens that Rose Acre Farms owned in their own</p> <p>6 houses or leased houses out on contract</p> <p>7 farms. And that's what we're going to</p> <p>8 invoice them for membership dues.</p> <p>9 Q. And you did, didn't you?</p> <p>10 A. And we did.</p> <p>11 Q. Thank you.</p> <p>12 Let's mark -- you can put that</p> <p>13 away.</p> <p>14 Let's mark as our next</p> <p>15 exhibit 114. Pass these over to the defense</p> <p>16 side. Pass these down to you guys.</p> <p>17 - - -</p> <p>18 (Exhibit Gregory-114, Major</p> <p>19 Prospects for UEP, Bates UE0198410,</p> <p>20 was marked for identification.)</p> <p>21 - - -</p> <p>22 BY MR. BARNES:</p> <p>23 Q. Mr. Gregory, take a look at</p> <p>24 Exhibit 114. It's a one page document, it</p> <p>25 bears identification number UE0198410. It is</p>	<p style="text-align: right;">953</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Pardon me, I'm sorry. Do you</p> <p>3 recall when Rose Acre became a member of</p> <p>4 USEM?</p> <p>5 A. I do not know when they did,</p> <p>6 I've forgotten.</p> <p>7 Q. Let me show you our next</p> <p>8 exhibit which is --</p> <p>9 A. I feel like I should know all</p> <p>10 this, but --</p> <p>11 Q. No, no. That's okay.</p> <p>12 A. -- I don't.</p> <p>13 Q. I wouldn't expect you to</p> <p>14 remember all of this information about your</p> <p>15 members going back many, many years.</p> <p>16 - - -</p> <p>17 (Exhibit Gregory-115, 12/22/06</p> <p>18 USEM Membership Agreement and Export</p> <p>19 Commitment, was marked for</p> <p>20 identification.)</p> <p>21 - - -</p> <p>22 BY MR. BARNES:</p> <p>23 Q. Can you identify that exhibit?</p> <p>24 A. It is a membership agreement</p> <p>25 and export commitment for Rose Acres with</p>

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<p style="text-align: right;">954</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 United States Egg Marketers.</p> <p>3 Q. What is the date of that USEM</p> <p>4 Rose Acre membership agreement?</p> <p>5 A. 22 December 2007.</p> <p>6 Q. But I believe that date may be</p> <p>7 incorrect for the record because if you look</p> <p>8 at the -- if you look at the fax header on</p> <p>9 the top --</p> <p>10 A. That says December 22, 2006.</p> <p>11 Q. I just wanted to correct the</p> <p>12 record.</p> <p>13 A. 2006.</p> <p>14 Q. I believe it is a December 22,</p> <p>15 2006, document.</p> <p>16 A. Right.</p> <p>17 Q. Now, under paragraph 1a at the</p> <p>18 top, "House capacity...", do you see that</p> <p>19 column?</p> <p>20 A. Yes.</p> <p>21 Q. Whose handwriting is that?</p> <p>22 A. I cannot read the signer of</p> <p>23 this document, but it's somebody from Rose</p> <p>24 Acre Farms.</p> <p>25 Q. Now, there's the handwritten --</p>	<p style="text-align: right;">956</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 increase.</p> <p>3 Q. Thank you. You can put that</p> <p>4 one aside.</p> <p>5 I'm just going to ask you to</p> <p>6 identify one document and then I am going to</p> <p>7 be quiet. Let's mark as our next exhibit.</p> <p>8 - - -</p> <p>9 (Exhibit Gregory-116, E-mail</p> <p>10 chain, Bates MFI0247110, was marked</p> <p>11 for identification.)</p> <p>12 - - -</p> <p>13 BY MR. BARNES:</p> <p>14 Q. This is Exhibit 116. It has a</p> <p>15 document identification number MFI0247110,</p> <p>16 and it appears to be an e-mail exchange</p> <p>17 between Mr. Gregory and Ky Hendrix. Is that</p> <p>18 correct, Mr. Gregory?</p> <p>19 MR. OLSON: Have you handed us a</p> <p>20 copy?</p> <p>21 MR. BARNES: I'm sorry, I</p> <p>22 apologize. I apologize.</p> <p>23 MR. OLSON: This is 116. Okay.</p> <p>24 THE WITNESS: Yes, it does.</p> <p>25 BY MR. BARNES:</p>
<p style="text-align: right;">955</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 in addition to the number 20 million written</p> <p>3 under the line, there's another handwritten</p> <p>4 number.</p> <p>5 A. Yes. I believe I recognize</p> <p>6 that as Linda Reichert who worked for us and</p> <p>7 was the one that did the invoicing for</p> <p>8 membership. And I would suspect, I'm</p> <p>9 guessing now, that she had called Rose Acre</p> <p>10 Farms to get a more exact number of what the</p> <p>11 membership. And it turned out to be, I</p> <p>12 believe that's her writing that says</p> <p>13 \$20,586,000.</p> <p>14 Q. Now, would you compare that to</p> <p>15 the Rose Acre house capacity on Exhibit 113,</p> <p>16 please?</p> <p>17 A. That's --</p> <p>18 Q. Exhibit 113. And what is the</p> <p>19 house capacity on Exhibit 113?</p> <p>20 A. I'm sorry. 16 million.</p> <p>21 Q. So how -- what is the increase</p> <p>22 in the house capacity for Rose Acre hens from</p> <p>23 2000 -- pardon me, 2/11/2002 until December</p> <p>24 of 2006?</p> <p>25 A. Four and a half million bird</p>	<p style="text-align: right;">957</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you recognize that as an</p> <p>3 e-mail exchange that you participated in with</p> <p>4 Mr. Hendrix?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Mr. Hendrix was a Rose Acre</p> <p>7 employee at the time. Is that correct?</p> <p>8 A. Yes.</p> <p>9 MR. BARNES: Thank you very</p> <p>10 much, Mr. Gregory. I have no further</p> <p>11 questions. Thank you for your</p> <p>12 patience.</p> <p>13 MS. LEVINE: I'm going to ask</p> <p>14 you a quick question off the record</p> <p>15 about timing so that we can finish up</p> <p>16 today. Can you go off the record for</p> <p>17 a minute?</p> <p>18 VIDEOGRAPHER: The time is</p> <p>19 approximately 2:49 p.m. We're off the</p> <p>20 record.</p> <p>21 - - -</p> <p>22 (A recess was taken.)</p> <p>23 - - -</p> <p>24 VIDEOGRAPHER: The time is</p> <p>25 approximately 2:51 p.m. We're back on</p>

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<p style="text-align: right;">958</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 the record.</p> <p>3 - - -</p> <p>4 FURTHER EXAMINATION</p> <p>5 - - -</p> <p>6 BY MR. OLSON:</p> <p>7 Q. Mr. Gregory, let's see how we</p> <p>8 can do here. You can put everything down.</p> <p>9 You don't need to look at the document right</p> <p>10 now.</p> <p>11 In the exchange with Rose Acre</p> <p>12 counsel, you discussed the -- you observed</p> <p>13 that Rose Acre was an independent company.</p> <p>14 Right?</p> <p>15 A. Yes.</p> <p>16 Q. Are all UEP members independent</p> <p>17 companies?</p> <p>18 A. Yes.</p> <p>19 Q. And they all have independent</p> <p>20 views?</p> <p>21 A. Yes.</p> <p>22 Q. And with respect to the UEP</p> <p>23 certified program, did all UEP members have</p> <p>24 the same identical interests or did they have</p> <p>25 their own independent interests?</p>	<p style="text-align: right;">960</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Right?</p> <p>3 A. This letter was not sent to me.</p> <p>4 I was not copied on this. This was sent</p> <p>5 to -- it was sent to Irving Isaacson and</p> <p>6 copied to Al Pope.</p> <p>7 Q. And then Mr. Isaacson sent it</p> <p>8 to you. Correct?</p> <p>9 A. No. I don't know --</p> <p>10 Q. Look at the cover.</p> <p>11 A. Okay. Yeah. Yeah. Okay.</p> <p>12 Yeah. Yes. Okay.</p> <p>13 Q. So Exhibit 48 was sent to you?</p> <p>14 A. Uh-huh.</p> <p>15 Q. And what was sent to you was a</p> <p>16 letter written by John Mueller. Right?</p> <p>17 A. Uh-huh. Yes.</p> <p>18 Q. We talked about it a couple of</p> <p>19 times. Some of the things Mr. Mueller said</p> <p>20 got you pretty upset. Right?</p> <p>21 A. You know --</p> <p>22 Q. I'm just trying to get on the</p> <p>23 same page here.</p> <p>24 A. What upset me was the fact that</p> <p>25 he's accusing me of having a hidden agenda.</p>
<p style="text-align: right;">959</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Well, there is different</p> <p>3 opinions throughout the 200 or so members or</p> <p>4 whatever it was. But they all have an</p> <p>5 independent view, yes. I'm not sure I'm</p> <p>6 answering it properly. But it wasn't like we</p> <p>7 were all marching in the same line in the</p> <p>8 early days of this.</p> <p>9 Q. Your members have independent</p> <p>10 views, they have independent business</p> <p>11 interests as well. Correct?</p> <p>12 A. Yes.</p> <p>13 MS. LEVINE: Object to the form</p> <p>14 of the question.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. OLSON:</p> <p>17 Q. Now, let's look at Exhibit 48</p> <p>18 which in front of you, please.</p> <p>19 A. Yes.</p> <p>20 Q. Your counsel, Ms. Levine,</p> <p>21 circled back to this exhibit. This was the</p> <p>22 letter that was sent to you by Irving</p> <p>23 Isaacson originally written by John Mueller.</p> <p>24 And this letter contained some statements by</p> <p>25 Mr. Mueller that got you pretty upset.</p>	<p style="text-align: right;">961</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay. I just want to be clear</p> <p>3 on what upset you about the letter.</p> <p>4 A. He could have been man enough</p> <p>5 to have said that to my face.</p> <p>6 Q. Now, Mr. Gregory, in your</p> <p>7 personal opinion as the senior vice president</p> <p>8 of UEP at this time, you see in the paragraph</p> <p>9 from Mr. Mueller that starts with</p> <p>10 "Second....," and he says that he had visited</p> <p>11 with you and Al Pope about seeking some</p> <p>12 indicia of proof that UEP is and remains a</p> <p>13 viable agricultural cooperative association.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Now, at the time in your</p> <p>17 position as senior vice president, was that a</p> <p>18 fair question to ask?</p> <p>19 MS. LEVINE: Object to the form</p> <p>20 of the question. Calls for</p> <p>21 speculation.</p> <p>22 THE WITNESS: I think it's</p> <p>23 probably a fair question by any</p> <p>24 member.</p> <p>25 BY MR. OLSON:</p>

80 (Pages 958 to 961)

<p style="text-align: right;">962</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And he continues, Mr. Mueller</p> <p>3 continues, he says, "...I am wondering how</p> <p>4 the associate or allied memberships auger</p> <p>5 into all of this?"</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Was that fair question for a</p> <p>9 member to have?</p> <p>10 MS. LEVINE: Object to the form</p> <p>11 of the question. Calls for speculation.</p> <p>12 THE WITNESS: It might be if you</p> <p>13 were naive about what we had done. If</p> <p>14 you had been attending meetings and</p> <p>15 you were on the board and so forth,</p> <p>16 you knew that UEA Allied and Further</p> <p>17 Processors was a completely separate</p> <p>18 entity.</p> <p>19 BY MR. OLSON:</p> <p>20 Q. But was it fair for someone to</p> <p>21 ask that question?</p> <p>22 A. It was fair to ask a question,</p> <p>23 but Bob Sparboe would have very well known, I</p> <p>24 think, that they were separate organizations.</p> <p>25 Q. Now, if you turn to the end of</p>	<p style="text-align: right;">964</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. I think so.</p> <p>3 Q. Now, you with Ms. Levine</p> <p>4 discussed the fact that you felt some comfort</p> <p>5 in -- well, you know what, let me wait. I'm</p> <p>6 not sure we have the exhibit yet.</p> <p>7 Let me ask this question: In</p> <p>8 the context of Sparboe with Ms. Levine, you</p> <p>9 also discussed the 100 percent rule. Do you</p> <p>10 recall that?</p> <p>11 A. Yes.</p> <p>12 Q. You gave some testimony to the</p> <p>13 effect that your belief was 100 percent</p> <p>14 compliance was the only way to have a</p> <p>15 credible program. Right?</p> <p>16 A. Yes.</p> <p>17 Q. That was your belief. Right?</p> <p>18 A. Yes.</p> <p>19 Q. Now, if full compliance was so</p> <p>20 essential to having a credible UEP program,</p> <p>21 why didn't UEP require compliance with the</p> <p>22 program as a condition of membership?</p> <p>23 MS. LEVINE: Object to the form</p> <p>24 of the question. Mischaracterizes --</p> <p>25 THE WITNESS: Ask that again,</p>
<p style="text-align: right;">963</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Mr. Mueller's letter, this is a portion, that</p> <p>3 paragraph we've looked at, it says,</p> <p>4 "Finally,...we are concerned that yourself or</p> <p>5 a reputedly retained law firm..." goes on</p> <p>6 about whether the "...cooperative status</p> <p>7 still attaches to the UEP trade association;</p> <p>8 and that the Animal Welfare initiatives there</p> <p>9 under have been scrutinized by concerned</p> <p>10 parties from a thoroughly legal perspective."</p> <p>11 In your position at that time</p> <p>12 as senior vice president, was it fair for a</p> <p>13 member to ask whether the animal welfare</p> <p>14 initiatives had been scrutinized from a legal</p> <p>15 perspective? Fair question?</p> <p>16 MS. LEVINE: Object.</p> <p>17 THE WITNESS: It's a fair</p> <p>18 question. However, I think in many</p> <p>19 cases there was counsel at these</p> <p>20 meetings.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. But it's a fair concern. Right?</p> <p>23 A. I don't have any problem with</p> <p>24 that.</p> <p>25 Q. Fair question to ask?</p>	<p style="text-align: right;">965</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 I'm not sure I understand that.</p> <p>3 MR. OLSON: Are you done?</p> <p>4 MS. LEVINE: The membership in</p> <p>5 what?</p> <p>6 MR. OLSON: I'll ask it again.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. If full compliance with the UEP</p> <p>9 certified program was so essential to UEP's</p> <p>10 credibility, why wasn't being certified under</p> <p>11 the program a condition of membership in UEP?</p> <p>12 A. Now, they're completely two</p> <p>13 separate things. This UEP certified program</p> <p>14 is unconditional of membership because we</p> <p>15 wanted to spread it out to the whole</p> <p>16 industry, let anybody that needed to market</p> <p>17 these eggs have access to it.</p> <p>18 Q. But why didn't you require all</p> <p>19 UEP members to be certified under the</p> <p>20 program?</p> <p>21 A. It was a voluntary program.</p> <p>22 Q. Why? If full compliance was so</p> <p>23 essential --</p> <p>24 A. No, no, no, no. Full</p> <p>25 compliance, 100 percent rule is completely</p>

81 (Pages 962 to 965)

<p style="text-align: right;">966</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 different.</p> <p>3 Q. Well, if the credibility --</p> <p>4 A. You're wasting your time with</p> <p>5 nitpicking stuff again today and I'm going to</p> <p>6 be out of here.</p> <p>7 Q. That's fine. You can stand up</p> <p>8 and walk out whenever you want.</p> <p>9 A. I'm just telling you you're</p> <p>10 wasting your time.</p> <p>11 Q. And I'm telling you, you can</p> <p>12 stand up and walk out whenever you want.</p> <p>13 MS. LEVINE: Mr. Gregory, he</p> <p>14 wants you to walk out. We're going to</p> <p>15 finish the deposition. Sit back and</p> <p>16 relax. You can ask the questions and</p> <p>17 you sit back and answer.</p> <p>18 MR. OLSON: I appreciate no more</p> <p>19 threats like that.</p> <p>20 BY MR. OLSON:</p> <p>21 Q. Now, if -- this is all I want</p> <p>22 to understand. If your belief was the</p> <p>23 credibility of UEP --</p> <p>24 A. The credibility as we're</p> <p>25 talking about, not credibility of UEP, we're</p>	<p style="text-align: right;">968</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Objection. Asked</p> <p>3 and answered now three or four times.</p> <p>4 THE WITNESS: I don't know --</p> <p>5 yeah, I don't know how --</p> <p>6 MS. LEVINE: If you can give any</p> <p>7 other answer --</p> <p>8 THE WITNESS: I don't have</p> <p>9 another answer.</p> <p>10 MS. LEVINE: Fine.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. What was the previous answer?</p> <p>13 MS. LEVINE: You can read it</p> <p>14 back.</p> <p>15 MR. OLSON: I'm trying, as you</p> <p>16 know, not to take the full time, but</p> <p>17 this is not helping.</p> <p>18 MS. LEVINE: I know. But you</p> <p>19 asked the same question three times.</p> <p>20 MR. OLSON: We can do it your</p> <p>21 way, I'm just telling you it's not</p> <p>22 going to help get out of here with me</p> <p>23 not taking the full time.</p> <p>24 BY MR. OLSON:</p> <p>25 Q. The question is, why didn't UEP</p>
<p style="text-align: right;">967</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 talking credibility of the UEP certified</p> <p>3 program.</p> <p>4 Q. Why did you keep the program</p> <p>5 voluntary as opposed to requiring that all</p> <p>6 members be a part of it? That's the</p> <p>7 question.</p> <p>8 A. Because I just said it is not a</p> <p>9 condition of membership.</p> <p>10 Q. And the question is why, why</p> <p>11 not?</p> <p>12 MS. LEVINE: Asked and answered</p> <p>13 three times.</p> <p>14 THE WITNESS: Because we did not</p> <p>15 want to force people to be UEP</p> <p>16 members. This program was available.</p> <p>17 You don't have to be a UEP member to</p> <p>18 use this program.</p> <p>19 BY MR. OLSON:</p> <p>20 Q. But you wanted everyone in the</p> <p>21 industry to be in the program. Right?</p> <p>22 A. Sure, I'd like that.</p> <p>23 Q. Why didn't you require</p> <p>24 compliance with the program as a condition of</p> <p>25 UEP membership?</p>	<p style="text-align: right;">969</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 decide to require compliance with the program</p> <p>3 as a condition of membership?</p> <p>4 MS. LEVINE: Asked and answered.</p> <p>5 You can repeat your answer to the best</p> <p>6 of your ability.</p> <p>7 THE WITNESS: This is an animal</p> <p>8 welfare program. This is not a</p> <p>9 membership program. We recognize that</p> <p>10 there are people being provided with</p> <p>11 eggs out there that come from people</p> <p>12 that are not our UEP members. We did</p> <p>13 not want them being shut out of this</p> <p>14 program.</p> <p>15 MR. OLSON: Have we found</p> <p>16 Exhibit 105? Are they there?</p> <p>17 MS. LEVINE: You're looking at</p> <p>18 105?</p> <p>19 MR. OLSON: 105.</p> <p>20 MS. LEVINE: I'm showing the</p> <p>21 witness 105.</p> <p>22 MR. OLSON: Okay.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. In questions with Ms. Levine,</p> <p>25 you testified that you had some comfort</p>

82 (Pages 966 to 969)

<p style="text-align: right;">970</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 because USDA personnel from time to time sat</p> <p>3 in the room at meetings. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. And were those USDA personnel</p> <p>6 that sat in the room, were they lawyers?</p> <p>7 A. I don't know what their -- I</p> <p>8 don't know what their education is.</p> <p>9 Q. So to your knowledge, none of</p> <p>10 them were lawyers. Correct?</p> <p>11 A. To my knowledge, they were not.</p> <p>12 Q. Did you ever ask that -- a USDA</p> <p>13 or any other government official whether</p> <p>14 UEP's conduct was lawful?</p> <p>15 A. I don't recall whether I did or</p> <p>16 not.</p> <p>17 Q. Exhibit 105, which you talked</p> <p>18 to your counsel about, is a letter to a Mr.</p> <p>19 William Hawks. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know Mr. William Hawks'</p> <p>22 educational background?</p> <p>23 A. No, I do not.</p> <p>24 Q. Do you know if he's a lawyer?</p> <p>25 A. No, I do not.</p>	<p style="text-align: right;">972</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. When did you hire Mr. Wilson as</p> <p>3 compliance counsel?</p> <p>4 A. I don't know the date.</p> <p>5 Q. But it was sometime around this</p> <p>6 time. Right?</p> <p>7 A. Yes.</p> <p>8 Q. It was sometime around 2009?</p> <p>9 A. Yes.</p> <p>10 Q. And prior to that, there was no</p> <p>11 formal UEP/USEM compliance counsel. Correct?</p> <p>12 MS. LEVINE: Object to the form</p> <p>13 of the question.</p> <p>14 MR. McKENNEY: Objection.</p> <p>15 Beyond the scope.</p> <p>16 THE WITNESS: Your question</p> <p>17 again was what?</p> <p>18 BY MR. OLSON:</p> <p>19 Q. And prior to hiring Mr. Wilson,</p> <p>20 there was no position of UEP/USEM compliance</p> <p>21 counsel. Correct?</p> <p>22 MS. LEVINE: Object to the form</p> <p>23 of the question.</p> <p>24 MR. McKENNEY: Same objection.</p> <p>25 MS. LEVINE: As to Mr. Gregory's</p>
<p style="text-align: right;">971</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you ever ask him for legal</p> <p>3 advice?</p> <p>4 A. No, I did not.</p> <p>5 MR. OLSON: Have we found</p> <p>6 Exhibit 94?</p> <p>7 MS. LEVINE: I have Exhibit 94.</p> <p>8 MS. TURNER-DODGE: 95.</p> <p>9 MR. OLSON: Sorry, 95.</p> <p>10 MS. LEVINE: 95.</p> <p>11 MR. OLSON: We'll try to find</p> <p>12 it, but I'll tell you what it is while</p> <p>13 we're looking for it.</p> <p>14 MS. LEVINE: We got it. We got</p> <p>15 it. We got it. Handing the witness</p> <p>16 95.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. 95, if you look at the first</p> <p>19 page, it's Board of Directors' meeting</p> <p>20 October 15-16, 2009. There's a President's</p> <p>21 comment. "President Gene Gregory introduced</p> <p>22 Randon Wilson as UEP/USEM compliance council</p> <p>23 (sic)."</p> <p>24 Do you see that?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">973</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 understanding. You can answer who</p> <p>3 your lawyers were.</p> <p>4 THE WITNESS: I thought that the</p> <p>5 attorneys that we had previous to</p> <p>6 Randon Wilson were familiar with all</p> <p>7 the things that we need to do, and</p> <p>8 that they were as such serving as</p> <p>9 compliance counsel when they were at</p> <p>10 these meetings.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. And that's Brann & Isaacson?</p> <p>13 MR. McKENNEY: Objection.</p> <p>14 Beyond the scope.</p> <p>15 THE WITNESS: It was. And then</p> <p>16 Nowell Berreth after that, yes.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Now, you talked about with</p> <p>19 Ms. Levine, we were discussing the origin of</p> <p>20 the Animal Welfare Program and talked about</p> <p>21 what happened in Europe.</p> <p>22 A. Yes.</p> <p>23 Q. You said the changes that</p> <p>24 happened in Europe were not science based?</p> <p>25 A. That was my opinion, yes.</p>

83 (Pages 970 to 973)

<p style="text-align: right;">974</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. What part of the changes that</p> <p>3 occurred in Europe did you believe were not</p> <p>4 science based?</p> <p>5 A. The enriched colony cage was a</p> <p>6 thought and a design by a gentleman named Dr.</p> <p>7 Michael Appleby who I happened to know. And</p> <p>8 what he designed was just a little bit bigger</p> <p>9 cage and he put a nest in it and a scratch</p> <p>10 area in it and then he convinced the -- he</p> <p>11 and his activist friends convinced the</p> <p>12 legislators that this is what they should</p> <p>13 use. Now, other than Dr. Appleby, there was</p> <p>14 no other peer review science anything</p> <p>15 whatsoever, but -- and as it turned out,</p> <p>16 great deal of work came later on that. And</p> <p>17 over the evolution of time, I think they</p> <p>18 designed a very good enriched colony case.</p> <p>19 But in the beginning I do not believe it was</p> <p>20 science based.</p> <p>21 Q. Other than giving the hens an</p> <p>22 enriched cage, and just to be clear, we're</p> <p>23 talking about giving hens a scratching pad</p> <p>24 and things like that. Right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">976</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. I can't remember all the things</p> <p>3 that was in their guidelines. We're talking</p> <p>4 about --</p> <p>5 Q. Sitting here right now,</p> <p>6 anything else come to mind?</p> <p>7 A. No.</p> <p>8 Q. Now, you talked about the</p> <p>9 Scientific Committee with your counsel. Were</p> <p>10 there formal rules, to your knowledge, that</p> <p>11 governed how the Scientific Committee made</p> <p>12 its decisions?</p> <p>13 A. No, but Dr. Armstrong</p> <p>14 identified early on that everybody would have</p> <p>15 their input and that everybody would have</p> <p>16 different research projects, but at the end</p> <p>17 of the conclusion of all that, they had to</p> <p>18 come to a consensus and leave the room in</p> <p>19 support of whatever the recommendation was.</p> <p>20 Q. Does consensus mean majority</p> <p>21 rule or something different?</p> <p>22 A. No, in this case, they debated</p> <p>23 long enough that virtually it was unanimous.</p> <p>24 Q. So decisions at the Scientific</p> <p>25 Committee weren't made by voting?</p>
<p style="text-align: right;">975</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. The normal -- we're talking</p> <p>3 about giving hens the opportunity to do the</p> <p>4 types of things that hens like to do. Right?</p> <p>5 MS. ANDERSON: Objection.</p> <p>6 MS. LEVINE: Objection to the</p> <p>7 form of the question. Calls for</p> <p>8 speculation as to the --</p> <p>9 THE WITNESS: I'm not a</p> <p>10 scientist. I don't know what hens</p> <p>11 like to do.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. Well, things like a scratching</p> <p>14 pad and other things like that. Right?</p> <p>15 MS. LEVINE: Object. Same</p> <p>16 objection. Calls for speculation.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Okay. What other things go in</p> <p>19 an enriched cage, to your knowledge?</p> <p>20 A. There is a perch, there is a</p> <p>21 nest area and there is a scratch area.</p> <p>22 Q. Other than providing those</p> <p>23 types of things to hens, are there other</p> <p>24 things that were happening in Europe that you</p> <p>25 thought were not science based?</p>	<p style="text-align: right;">977</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. It was not a case of aye, yes,</p> <p>3 that kind of stuff, no.</p> <p>4 Q. You talked about the Producer</p> <p>5 Committee having what you called</p> <p>6 contributors. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Was that a formal position that</p> <p>9 was spelled out in any document?</p> <p>10 A. No.</p> <p>11 Q. You talked about FMI and NCCR</p> <p>12 participating in the development of the UEP</p> <p>13 program?</p> <p>14 A. Yes.</p> <p>15 Q. You identified FMI and NCCR</p> <p>16 giving some input into the phase-in schedule?</p> <p>17 A. Yes.</p> <p>18 Q. Are there other aspects of the</p> <p>19 UEP program that you attribute to FMI and</p> <p>20 NCCR?</p> <p>21 A. Yes, because they -- when they</p> <p>22 gave us the original endorsement, they noted,</p> <p>23 I think this is -- I think they noted that</p> <p>24 they did not agree with our early guidelines</p> <p>25 of the ammonia standards.</p>

84 (Pages 974 to 977)

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<p style="text-align: right;">978</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Any others?</p> <p>3 A. Again, you know, I don't</p> <p>4 recall.</p> <p>5 Q. You testified in response to</p> <p>6 Ms. Levine's questions that flock size has</p> <p>7 increased considerably over the time of the</p> <p>8 program. Do you recall that?</p> <p>9 A. Yes.</p> <p>10 Q. What's the data you're basing</p> <p>11 that on?</p> <p>12 A. It's based upon the USDA</p> <p>13 monthly hen inventory figures.</p> <p>14 Q. Are you comparing those figures</p> <p>15 from one year to the figures in another year</p> <p>16 or are you doing something different?</p> <p>17 A. I'm comparing it month by month</p> <p>18 and arriving at a yearly average of those</p> <p>19 monthly figures in doing so. And then</p> <p>20 comparing one year to the other.</p> <p>21 Q. So a yearly average over time</p> <p>22 is the basis for the figure. Correct?</p> <p>23 A. I guess that's what I said, yes.</p> <p>24 Q. That was the basis for your</p> <p>25 statement? You have to verbalize your</p>	<p style="text-align: right;">980</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Bell's --</p> <p>3 A. We've been over this three</p> <p>4 times now.</p> <p>5 MS. LEVINE: Mr. Gregory, hold</p> <p>6 on. You're almost done.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. Where we're talking -- where</p> <p>9 you report Mr. Bell's ideas about an industry</p> <p>10 wide policy of a minimum space floor</p> <p>11 allowance.</p> <p>12 MS. LEVINE: Hold on. We need</p> <p>13 to get Mr. Gregory the document.</p> <p>14 THE WITNESS: I remember that.</p> <p>15 MS. LEVINE: You need to have</p> <p>16 the document in front of you.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Here's an extra copy.</p> <p>19 Page 3. Now, in the context of</p> <p>20 discussing this with your counsel, you gave</p> <p>21 some testimony about how you were always</p> <p>22 careful when you talked about flock reduction</p> <p>23 to talk about per cage flock reduction.</p> <p>24 Right? You have to verbalize the answer.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">979</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 answer.</p> <p>3 A. Yes.</p> <p>4 Q. Did you take account -- into</p> <p>5 account things like population changes?</p> <p>6 A. What population changes?</p> <p>7 Q. People.</p> <p>8 A. No. We're talking about --</p> <p>9 we're talking about comparing bird numbers.</p> <p>10 We're not talking about comparing people</p> <p>11 numbers. Your question was about and her</p> <p>12 question was about the flock size.</p> <p>13 Q. Your statement about flock size</p> <p>14 increasing is just a pure statement that the</p> <p>15 numbers in later years are larger than</p> <p>16 numbers in the earlier years. Correct?</p> <p>17 A. According to USDA statistics.</p> <p>18 Q. And you have no opinion on what</p> <p>19 those numbers would have been absent the UEP</p> <p>20 certified program. Correct?</p> <p>21 A. I don't have any way of knowing</p> <p>22 what that would be.</p> <p>23 Q. Now, we need Exhibit 11. Does</p> <p>24 anybody have it? This is United Voices from</p> <p>25 August 2, 1999, where you report Mr.</p>	<p style="text-align: right;">981</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And you said you only talked</p> <p>3 about reduction in a single cage. Right?</p> <p>4 A. Well, I'm talking about the</p> <p>5 space per bird in single cage is what I'm</p> <p>6 talking about. And then so that you don't</p> <p>7 trip me up, and in order to get this done, we</p> <p>8 used the house average to get it done. And</p> <p>9 so when I talk about birds, I'm talking about</p> <p>10 individual cage as well as I'm talking about</p> <p>11 a house number.</p> <p>12 Q. But this idea reported to the</p> <p>13 membership in August of 1999 in the United</p> <p>14 Voices isn't talking about eliminating birds</p> <p>15 from a single cage, is it?</p> <p>16 A. You know, I'm having trouble</p> <p>17 with this real thing because I don't know</p> <p>18 what it has to do with this, but know Don</p> <p>19 Bell has written about the fact that there</p> <p>20 are birds within houses in this -- in the</p> <p>21 country that are stocked at less than</p> <p>22 48 square inches and that it would help</p> <p>23 the -- help things if everybody was required</p> <p>24 to go to 48 inches.</p> <p>25 Q. And this idea proposed to the</p>

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<p style="text-align: right;">982</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 membership about -- that would lead to</p> <p>3 millions of extra birds being eliminated,</p> <p>4 that's not being eliminated from a cage.</p> <p>5 Right?</p> <p>6 MS. LEVINE: Object to the form</p> <p>7 of the question.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. That's being eliminated from</p> <p>10 the industry?</p> <p>11 MS. LEVINE: Mr. Gregory --</p> <p>12 BY MR. OLSON:</p> <p>13 Q. True statement?</p> <p>14 MS. LEVINE: -- listen to the</p> <p>15 question. Object to the form of the</p> <p>16 question. See how best you can answer</p> <p>17 it.</p> <p>18 BY MR. OLSON:</p> <p>19 Q. True statement?</p> <p>20 A. That's what the document says.</p> <p>21 Q. Now let's look at 23. I'll</p> <p>22 give you a nonofficial copy, but here's 23.</p> <p>23 A. What time is your flight?</p> <p>24 Q. I have a meeting, very</p> <p>25 important meeting at 4:00. We're almost</p>	<p style="text-align: right;">984</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 laying hens. USDA doesn't report inventory</p> <p>3 on a per cage. So we're talking about, yes,</p> <p>4 a national hen inventory.</p> <p>5 Q. Let me hand you what's been</p> <p>6 marked 46. You talked about this with your</p> <p>7 counsel. Page 2. And there were some</p> <p>8 testimony about this price turnaround where I</p> <p>9 thought you were saying something about some</p> <p>10 prices went up, some prices went down. Do</p> <p>11 you recall that testimony?</p> <p>12 A. And I might have and I might</p> <p>13 have been in error. I don't know. I scanned</p> <p>14 it very quickly.</p> <p>15 Q. Page 2 over here.</p> <p>16 A. Yes.</p> <p>17 Q. So let's just see if we can</p> <p>18 clear it up. Shell eggs is a 16 cents per</p> <p>19 dozen increase?</p> <p>20 A. Right. Yep.</p> <p>21 Q. Breaking stock, 14.8 cent per</p> <p>22 dozen increase. Right?</p> <p>23 A. Right.</p> <p>24 Q. Unpasteurized whole, 11.8 cent</p> <p>25 per pound increase. Right?</p>
<p style="text-align: right;">983</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 done.</p> <p>3 23, in the same context with</p> <p>4 your counsel, you talked about this idea, you</p> <p>5 kept your discussions to reduction per cage.</p> <p>6 The discussion here on page 1, 5b --</p> <p>7 A. We've done this before, haven't</p> <p>8 we?</p> <p>9 Q. This isn't talking about per</p> <p>10 cage reduction in flock, is it?</p> <p>11 A. You asked me about this before,</p> <p>12 haven't you? I've seen this before.</p> <p>13 Q. Yes. It's not talking about a</p> <p>14 per cage flock reduction, is it?</p> <p>15 MS. LEVINE: Mr. Gregory, look</p> <p>16 at the document.</p> <p>17 THE WITNESS: That says, "Pullet</p> <p>18 Costs Per Cage."</p> <p>19 BY MR. OLSON:</p> <p>20 Q. When it -- 5b that talks about</p> <p>21 inevitably reducing layer population, that's</p> <p>22 not talking about a per cage reduction, is</p> <p>23 it?</p> <p>24 A. You know, almost everything</p> <p>25 we've talked about is about USDA inventory of</p>	<p style="text-align: right;">985</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Let me correct my statement</p> <p>3 then. And it shows in each category there</p> <p>4 was a price increase.</p> <p>5 Q. That was helpful. We can put</p> <p>6 that aside.</p> <p>7 Mr. Gregory, isn't it a fact</p> <p>8 that the Scientific Advisory Committee</p> <p>9 recommended that induced molting should not</p> <p>10 be compared to the type of natural molting</p> <p>11 that hens go through?</p> <p>12 A. Yes, they do.</p> <p>13 Q. They said that that's not a way</p> <p>14 induced molting should be defended. Correct?</p> <p>15 A. That's exactly right.</p> <p>16 Q. So if someone tried to</p> <p>17 define -- defend induced molting as</p> <p>18 comparable to the natural --</p> <p>19 A. I was not trying to defend it</p> <p>20 by doing so.</p> <p>21 Q. And if someone did that, you</p> <p>22 would disagree with them?</p> <p>23 A. I was trying to explain it to</p> <p>24 people that I think don't know the egg</p> <p>25 industry.</p>

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<p style="text-align: right;">986</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Does anybody have</p> <p>3 Exhibit 27?</p> <p>4 THE WITNESS: How many hours</p> <p>5 have they had now?</p> <p>6 MS. LEVINE: A couple more</p> <p>7 minutes, Mr. Gregory. Concentrate on</p> <p>8 your answers.</p> <p>9 MR. BARNES: It doesn't matter</p> <p>10 if it's official or not.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. You know what, just keep this.</p> <p>13 We can skip this document. Here you go. We</p> <p>14 can skip it. Let me see -- all right. Do we</p> <p>15 have -- do you have 20 which is the final</p> <p>16 Scientific Advisory Committee report? There</p> <p>17 it is.</p> <p>18 A. You know, a question is I</p> <p>19 raised my hand and said I'd swear to tell the</p> <p>20 truth. And I'm being called a liar evidently</p> <p>21 now.</p> <p>22 Q. And 107.</p> <p>23 THE WITNESS: I'm irritated a</p> <p>24 bit, Jan. I don't appreciate being</p> <p>25 called a liar.</p>	<p style="text-align: right;">988</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. So there are different aspects</p> <p>3 of looking at space. Correct?</p> <p>4 A. Yes. And I tried to explain to</p> <p>5 you that you couldn't do all that at once and</p> <p>6 so as the evolution of equipment changed,</p> <p>7 those things improved as a result of it.</p> <p>8 Q. And the Scientific Committee</p> <p>9 said science says that a hen should be</p> <p>10 guaranteed a cage that does not require their</p> <p>11 head to protrude into the cage above. Right?</p> <p>12 A. Yes, they did.</p> <p>13 Q. And that was never adopted by</p> <p>14 the UEP guidelines. Correct?</p> <p>15 A. You know, right now, I'm about</p> <p>16 ready to agree with anything you want to do.</p> <p>17 Handcuff me, I'm ready to go.</p> <p>18 Q. Well, that's not helpful as</p> <p>19 much as I appreciate the offer.</p> <p>20 MS. LEVINE: Look at the</p> <p>21 document.</p> <p>22 THE WITNESS: I've been over</p> <p>23 this I don't know how many times.</p> <p>24 BY MR. OLSON:</p> <p>25 Q. I think we're almost -- we're</p>
<p style="text-align: right;">987</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: I know. We're</p> <p>3 trying not to bring you back. A</p> <p>4 couple more minutes.</p> <p>5 THE WITNESS: I raised my hand</p> <p>6 and said I'd tell the truth. So</p> <p>7 what's your question?</p> <p>8 BY MR. OLSON:</p> <p>9 Q. Now, Mr. Gregory, this concept</p> <p>10 of the space given to hens --</p> <p>11 A. Yes.</p> <p>12 Q. -- that's not just a single</p> <p>13 concept. There are different aspects of it.</p> <p>14 Right?</p> <p>15 A. I don't understand the</p> <p>16 question.</p> <p>17 Q. Well, you can look at space as</p> <p>18 the average space in a cage. Right?</p> <p>19 A. Yes.</p> <p>20 Q. But you can also look at feeder</p> <p>21 space. Right?</p> <p>22 A. It's -- yes.</p> <p>23 Q. You can look at the height a</p> <p>24 chicken gets. Right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">989</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 really almost done here. I want to talk</p> <p>3 about the letter that Mr. Armstrong wrote</p> <p>4 about backfilling. It's 108.</p> <p>5 A. I remember it.</p> <p>6 Q. Do you recall, Mr. Gregory,</p> <p>7 the -- here it is. Do you recall the</p> <p>8 circumstances that led up to Mr. Armstrong</p> <p>9 sending this letter to Paul Bahan?</p> <p>10 A. I do not.</p> <p>11 Q. Were you involved in discussing</p> <p>12 this issue with Mr. Armstrong before the</p> <p>13 letter was written?</p> <p>14 A. I would have no way of knowing.</p> <p>15 I don't know.</p> <p>16 Q. You don't recall whether you</p> <p>17 were.</p> <p>18 A. No, I do not.</p> <p>19 Q. Correct?</p> <p>20 A. Pardon?</p> <p>21 Q. You don't recall whether you</p> <p>22 were. Correct?</p> <p>23 A. That's right.</p> <p>24 MR. OLSON: Anybody else have</p> <p>25 anything essential? Okay. Then I</p>

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<p style="text-align: right;">990</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 believe that's all we have. Thank</p> <p>3 you.</p> <p>4 MS. LEVINE: Mr. Gregory, I have</p> <p>5 one question. I have one -- do you</p> <p>6 have a question?</p> <p>7 MS. ANDERSON: No. I just want</p> <p>8 the record to reflect the agreement of</p> <p>9 counsel.</p> <p>10 MR. HUTCHINSON: Sparboe Farms</p> <p>11 does have questions.</p> <p>12 MS. LEVINE: One second.</p> <p>13 MR. HUTCHINSON: But I'll make</p> <p>14 the record.</p> <p>15 MS. LEVINE: Mr. Gregory, do you</p> <p>16 stand by all the answers that you gave</p> <p>17 today in response to my questions?</p> <p>18 THE WITNESS: I never</p> <p>19 intentionally lied about anything and</p> <p>20 I raised my hand and said I would tell</p> <p>21 the truth.</p> <p>22 MS. LEVINE: And you stand by</p> <p>23 everything you answered to my</p> <p>24 questions?</p> <p>25 THE WITNESS: Yes.</p>	<p style="text-align: right;">992</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. ANDERSON: Just for the</p> <p>3 record, Michael Foods has questions</p> <p>4 relating to the testimony that</p> <p>5 Mr. Gregory has given today. So if</p> <p>6 you would like Michael Foods to notice</p> <p>7 a separate deposition, I'd like your</p> <p>8 agreement on the record you will not</p> <p>9 object to that regardless that he's</p> <p>10 already been offered and been deposed</p> <p>11 in the MDL action.</p> <p>12 MS. LEVINE: We will not object</p> <p>13 to that.</p> <p>14 MR. HUTCHINSON: And that goes</p> <p>15 for Sparboe Farms as well.</p> <p>16 MS. LEVINE: We will not object</p> <p>17 to that.</p> <p>18 MR. OLSON: Thank you.</p> <p>19 VIDEOGRAPHER: The time is</p> <p>20 approximately 3:19 p.m. This ends</p> <p>21 tape six, volume three. We're now off</p> <p>22 the record.</p> <p>23 (Witness excused.)</p> <p>24 (Deposition concluded at 3:19</p> <p>25 p.m.)</p>
<p style="text-align: right;">991</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: And do you stand by</p> <p>3 everything you answered to my</p> <p>4 questions?</p> <p>5 THE WITNESS: Yes.</p> <p>6 MS. LEVINE: I think we have</p> <p>7 some stipulations.</p> <p>8 THE WITNESS: Even though you</p> <p>9 asked it a half a dozen times.</p> <p>10 MS. LEVINE: I think we have</p> <p>11 some stipulations for the record.</p> <p>12 MR. HUTCHINSON: Yes. Sparboe</p> <p>13 Farms does have questions for</p> <p>14 Mr. Gregory. Given that we subjected</p> <p>15 him now to three days of testimony and</p> <p>16 he has a flight to catch, we're</p> <p>17 willing to take his -- that testimony</p> <p>18 at a later date provided you will</p> <p>19 agree to make him available.</p> <p>20 MS. LEVINE: We're going to</p> <p>21 close this deposition as noticed by</p> <p>22 plaintiffs, and if other defendants</p> <p>23 want to notice his deposition and</p> <p>24 take -- and ask questions, we will so</p> <p>25 accommodate.</p>	<p style="text-align: right;">993</p> <p>1</p> <p>2 C E R T I F I C A T E</p> <p>3</p> <p>4</p> <p>5 I do hereby certify that I am a Notary</p> <p>6 Public in good standing, that the aforesaid</p> <p>7 testimony was taken before me, pursuant to</p> <p>8 notice, at the time and place indicated; that</p> <p>9 said deponent was by me duly sworn to tell</p> <p>10 the truth, the whole truth, and nothing but</p> <p>11 the truth; that the testimony of said</p> <p>12 deponent was correctly recorded in machine</p> <p>13 shorthand by me and thereafter transcribed</p> <p>14 under my supervision with computer-aided</p> <p>15 transcription; that the deposition is a true</p> <p>16 and correct record of the testimony given by</p> <p>17 the witness; and that I am neither of counsel</p> <p>18 nor kin to any party in said action, nor</p> <p>19 interested in the outcome thereof.</p> <p>20</p> <p>21 WITNESS my hand and official seal this</p> <p>22 9th day of July, 2013.</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">_____ Notary Public</p>

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